CASE NO.:
Appeal (civil) 4937-4940 of 1998

PETITIONER:
State of Gujarat

RESPONDENT:
Mirzapur Moti Kureshi Kassab Jamat & Ors.

DATE OF JUDGMENT: 26/10/2005

BENCH:
R.C. LAHOTI CJI & B.N. AGRAWAL & ARUN KUMAR & G.P. MATHUR & A.K. Mathur & C.K. THAKKER & P.K . BALASUBRAMANYAN

JUDGMENT:
JUDGMENT

WITH
CIVIL APPEAL NOS. 4941-44 of 1998
Shree Ahimsa Army Manav Kalyan
Jeev Daya Charitable Trust \005Appellant

Versus

Mirzapur Moti Kureshi Kassab
Jamat, Ahmedabad & Ors. \005Respondents

and

CIVIL APPEAL NO. 4945 of 1998
Akhil Bharat Krishi Goseva Sangh \005Appellant
Versus
Mirzapur Moti Kureshi Kassab
Jamat, Ahmedabad & Ors. \005Respondents

Delivered by
R.C. LAHOTI, CJI
A.K. MATHUR, J

R.C. LAHOTI, CJI

Section 2 of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (Gujarat Act No. 4 of 1994) which introduced certain amendments in Section 5 of the Bombay Animal Preservation Act, 1954 (as applicable to the State of Gujarat) has been struck down as ultra vires the Constitution by the High Court of Gujarat. These three sets of appeals by special leave have been filed thereagainst.

A chain of events, legislative and judicial, lead to the impugned enactment. To appreciate the core issue arising for decision in these appeals and also the constitutional questions arising therein, it will be useful to set out the preceding events in their chronological order.

PART - I

Backdrop of Events

Legislative history leading to impugned enactment

With a view to conserve the cattle wealth of the State of Bombay, the State Government enacted the Bombay Animal Preservation Act, 1948 and prohibited slaughter of animals which were useful for milch, breeding or agricultural purposes. This Act was substituted by the Bombay Animal Preservation Act of 1954 (hereinafter referred to as 'the Bombay Act'). The provisions relevant for our purpose are contained in Sections 5 and 6. Sub-sections (1), (2) and (3) of Section 5 and Section 6 are extracted and reproduced hereunder :

"5. (1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter or cause to be slaughtered any animal unless, he has obtained in respect of such animal a certificate in writing from the Competent Authority appointed for the area that the animal is fit for slaughter.

(2) No certificate shall be granted under sub-section (1), if in the opinion of the Competent Authority\027

(a) the animal, whether male or female, is useful or likely to become useful for the purpose of draught or any kind of agricultural operations;
(b) the animal, if male, is useful or likely to become useful for the purpose of breeding;
(c) the animal, if female, is useful or likely to become useful for the purpose of giving milk or bearing offspring.

(3) Nothing in this section shall apply to the slaughter of any animal above the age of fifteen years for bona-fide religious purposes :

Provided that a certificate in writing for such slaughter has been obtained from the Competent Authority.

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

6. No animal in respect of which a certificate has been issued under section 5 shall be slaughtered in any place other than a place

specified by such authority or officer as the State Government may appoint in this behalf."

The Preamble to the Act stated \026 "WHEREAS it is expedient to provide for the preservation of animals suitable for milch, breeding or for agricultural purposes; It is hereby enacted \005as follows:-"

The Statement of Objects and Reasons stated inter alia \026 "It is now proposed to repeal the Bombay Animal Preservation Act, 1948 and to undertake fresh legislation, on the basis of a model bill recommended by the Government of India, in order to stamp out slaughter in unauthorized places and abetment of offences which were not covered by the Bombay Animal Preservation Act, 1948".

The State of Gujarat was formed in the year 1960. Gujarat Legislature enacted The Bombay Animal Preservation (Gujarat Extension and Amendment) Act, 1961 whereby the Bombay Act was extended to the State of Gujarat in order to achieve uniformity in law in different parts of the State with regard to this subject. The Saurashtra Animal Preservation Act, 1956 which was applicable to that part of Gujarat which formed part of erstwhile State of Saurashtra was repealed. Apart from extending the Bombay Act, Section 5 of the Bombay Act, which was called 'the principal Act' in the Gujarat Act of 1961, was also amended by Section 4 thereof which reads as under:

4. Amendment of Section 5 of Bombay LXXII of 1954.- In section 5 of the principal Act, -

(1) After sub-section (1), the following sub-section shall be inserted, namely :-

"(1A) No certificate under sub-section (1) shall be granted in respect of a cow.";

(2) in sub-section (2), for the words "No certificate" the words, brackets, figure and letter "In respect of an animal to which sub-section (1A) does not apply, no certificate" shall be substituted;

(3) in sub-section (3), for the words "religious purposes" the words, "religious purposes, if such animal is not a cow" shall be substituted.

The above Act was assented to by the Governor on the 1st May, 1961 which was published in the Gujarat Government Gazette, Extraordinary, Part IV, dated May 6, 1961. The objects of such extension were mainly two : (i) to achieve uniformity in law in different parts of the State; and (ii) to impose a ban on cow slaughter. The amendment introduced by Section 4 of the Bombay Animal Preservation (Gujarat Extension and Amendment) Act, 1961 indicates that slaughter of cow was totally banned.

In 1979, the Gujarat Legislature enacted the Bombay

Animal Preservation (Gujarat Amendment) Act, 1979 to further amend the Bombay Act. Section 2 of this Act is relevant which is extracted and reproduced hereunder:

2. Amendment of section 5 of Bom. LXXII of 1954.__In the Bombay Animal Preservation Act, 1954, Bom. LXXII of 1954, (hereinafter referred to as "the principal Act"), in section 5,__

(1) for sub-section (1A), the following shall be substituted, namely:__

"(1A) No certificate under sub-section (1) shall be granted in respect of __
(a) a cow;
(b) the calf of a cow, whether male or female and if male, whether castrated or not;
(c) a bull below the age of sixteen years;
(d) a bullock below the age of sixteen years";

(2) for sub-section (3), the following sub-section shall be substituted, namely:__

"(3) Nothing in this section shall apply to __

(a) the slaughter of any of the following animals for such bonafide religious purposes, as may be prescribed, namely:__

(i) any animal above the age of fifteen years other than a cow, bull or bullock;

(ii) a bull above the age of fifteen years;

(iii) a bullock above the age of fifteen years;

(b) the slaughter of any animal not being a cow or a calf of a cow, on such religious days as may be prescribed.

Provided that a certificate in writing for the slaughter referred to in clause (a) or (b) has been obtained from the Competent Authority."

The Act was preceded by an Ordinance, a reference to which is not necessary. The Statement of Objects and Reasons of the Act are stated as under:
"Under the existing provisions of the Bombay Animal Preservation Act, 1954, although there is a total prohibition against the slaughter of a cow, the slaughter of progeny of a cow, that is to say bulls, bullocks and calves is prohibited, like that of other bovines only if they are useful or likely to become useful for the purposes of draught, agricultural operations, breeding, giving milk or bearing off spring. In order to give effect to the policy of the Government towards further securing the directive principle laid down in article 48 of the Constitution namely prohibiting the slaughter of cows and calves and other milch and draught cattle, it was considered necessary to impose a total prohibition against slaughter of the aforesaid

progeny of a cow below the age of eighteen years as they are useful for the aforesaid purposes\005"

The above-said Act was assented to by the Governor on 16th October 1979. The Act was given retrospective effect by sub-section (2) of Section 1 thereof, which provided that the amendment shall be deemed to have come into force on 28th November, 1978.

Digressing a little from the narration of legislative development, here itself we may indicate that the constitutional validity of the above amendment introduced by the Gujarat Legislature into the Bombay Act was put in issue and came to be dealt with initially by the Gujarat High Court and then this Court by a Constitution Bench in Haji Usmanbhai Hasanbhai Qureshi and Others v. State of Gujarat, (1986) 3 SCC 12. The Gujarat High Court turned down the challenge and the decision of the Gujarat High Court was upheld by this Court. We will revert back to this decision a little later.

This was followed by the impugned legislation, the Bombay Animal Preservation (Gujarat Amendment) Act, 1994. The Bombay Act of 1954 referred to as 'the principal Act' was further amended by Section 2 of the amending Act which reads as under:

2. In the Bombay Animal Preservation Act, 1954 (hereinafter referred to as "the principal Act"), in section 5, -

(1) in sub-section (1A), for clauses (c) and (d), the following clauses shall be substituted, namely :-

"(c) a bull;

(d) a bullock.";

(2) in sub-section (3), -

(i) in clause (a), sub-clauses (ii) and (iii) shall be deleted;

(ii) in clause (b), after the words "calf of a cow", the words "bull or bullock" shall be inserted."

The Act was preceded by an Ordinance, a reference to the provisions whereof is unnecessary. The Preamble to the Act reads as under:

"WHEREAS it is established that cow and her progeny sustain the health of the nation by giving them the life giving milk which is so essential an item in a scientifically balanced diet;

AND WHEREAS the working bullocks are indispensable for our agriculture for they supply power more than any other animal;

AND WHEREAS the working bullocks are often useful in ploughing the fields, drawal of water

from the wells and also very useful for drawing carts for transporting grains and fodders from the fields to the residences of farmers as well as to the Agricultural Market Yards;

AND WHEREAS the dung of the animal is cheaper than the artificial manures and extremely useful for production of bio-gas;

AND WHEREAS it is established that the back-bone of Indian agriculture is, in a manner of speaking the cow and her progeny and have, on their back, the whole structure of the Indian agriculture and its economic system;

AND WHEREAS it is expedient to give effect to the policy of the State towards securing the principles laid down in articles 47, 48 and in clauses (b) and (c) of articles 39 of the Constitution of India and to protect, preserve and sustain cow and its progeny;"

The Statement of Objects and Reasons and the facts set out therein are of relevance and significance and hence are reproduced hereunder:

"The existing provisions of the Bombay Animal Preservation Act, 1954 provides for prohibition against the slaughter of cow, calf of a cow, and the bulls and bullocks below the age of sixteen years. It is an established fact that the cow and her progeny sustain the health of the nation by giving them the life giving milk which is so essential an item in a scientifically balanced diet.

The economy of the State of Gujarat is still predominantly agricultural. In the agricultural sector, use of animals for milch, draught, breeding or agricultural purposes has great importance. It has, therefore, become necessary to emphasise preservation and protection of agricultural animals like bulls and bullocks. With the growing adoption of non-conventional energy sources like bio-gas plants, even waste material have come to assume considerable value. After the cattle cease to breed or are too old to do work, they still continue to give dung for fuel, manure and bio-gas, and therefore, they cannot be said to be useless. It is well established that the backbone of Indian agriculture is, in a manner of speaking, the cow and her progeny and have on their back, the whole structure of the Indian agriculture and its economic system.

In order to give effect to the policy of the State towards securing the principles laid down in articles 47, 48 and clause (b) and (c) of article 39 of the Constitution of India, it was considered necessary also to impose total prohibition against slaughter of progeny of cow.

As the Gujarat Legislative Assembly was not in session the Bombay Animal Preservation (Gujarat Amendment) Ordinance, 1993 to amend the said Act was promulgated to achieve the aforesaid object in the interest of general public. This Bill seeks to replace the said Ordinance by an Act of the State Legislature."

The Challenge to the Constitutional Validity

The constitutional validity of the abovesaid legislation, that is, the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 was put in issue by four writ petitions filed in the High Court which were heard and disposed of by a common judgment dated April 16, 1998. Two of the writ petitions were filed by individuals who were butchers by profession, and are known as Kureshis. Two writ petitions were filed by the representative bodies of Kureshis. Akhil Bharat Krishi Goseva Sangh sought for intervention before the High Court and was allowed to be impleaded as a party-respondent in the writ petitions. Hinsa Virodhak Sangh, Jivan Jagruti Trust and Gujarat Prantiya Arya Pratinidhi Sabha also sought for intervention and they were also allowed to be impleaded by the High Court as party-respondents in the writ petitions. The High Court allowed the writ petitions and struck down the impugned legislation as ultra vires the Constitution. The High Court held that the Amendment Act imposed an unreasonable restriction on the fundamental rights and therefore, it was ultra vires the Constitution. The effect of the judgment of the High Court as summed up by the learned Judges would be that there would not be a total ban on the slaughter of bulls or bullocks above the age of 16 years; in other words animals could be slaughtered consistently with the provisions of the parent Act as it stood prior to the amendment brought in by Gujarat Act No. 4 of 1994. Feeling aggrieved by the said decision, the State of Gujarat and Akhil Bharat Krishi Goseva Sangh have filed these appeals. Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust, a Public Trust has filed an appeal by special leave, seeking leave of this Court to file the appeal, which has been granted.

On 17.2.2005, a three-Judge Bench of this Court, before which the appeals came up for hearing directed the matter to be placed for hearing before a Constitution Bench in the following terms of the order :

"Parties to these appeals agree that the issue involved in these appeals requires interpretation of the provisions of the Constitution of India especially in regard to the status of Directive Principles vis-‘-vis the Fundamental Rights as well as the effect of introduction of Articles 31C and 51A in the Constitution.

Therefore, in view of Article 145(3) of the Constitution, we think it appropriate that this matter should be heard by a Bench of at least 5 Judges."

On 19.7.2005, the Constitution Bench which heard the matter referred it to a Bench of seven Judges on an opinion that certain prior decisions of this Court by Constitution Benches

might call for reconsideration. This is how the matter came to be heard by this Bench.

We have heard Dr. L.M. Singhvi, Shri Soli J. Sorabjee and Shri S.K. Dholakia, Senior Advocates who led the submissions made on behalf of the appellants in the three sets of appeals. We have also heard Shri G.L. Sanghi, Senior Advocate and Shri Ramesh P. Bhatt, Senior Advocate, who led the arguments on behalf of the respondents (writ petitioners in High Court) in the several appeals. Before we notice and deal with the submissions made by the learned senior counsel for the appellants and the respondents, it will be useful to set out and deal with some of the decisions delivered by this Court which have been relied on by the High Court in its impugned judgment, and on which implicit and forceful reliance was placed by the learned senior counsel for the respondents in support of the judgment of the High Court.

Relevant Decisions of this Court

The most important and leading decision is Mohd. Hanif Quareshi and Ors. v. State of Bihar and Ors. 1959 SCR 629 (hereinafter referred to as 'Quareshi-I'). We propose to deal with this case somewhat in detail.

Three legislative enactments banning the slaughter of certain animals were passed respectively by the States of Bihar, Uttar Pradesh and Madhya Pradesh. In Bihar, the Bihar Preservation and Improvement of Animals Act, 1956 (Bihar Act II of 1956) was introduced which imposed a total ban on the slaughter of all categories of animals belonging to the species of bovine cattle. In Uttar Pradesh, the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U.P. Act I of 1956) was enacted which also imposed a total ban on the slaughter of cows and her progeny which included bulls, bullocks, heifers and cows. In the State of Madhya Pradesh, it was the C.P. and Berar Animal Preservation Act (Act LII of 1949) which was amended and applied. It imposed a total ban on the slaughter of cows and female calf of a cow. The male calf of a cow, bull, bullock, buffalo (male or female, adult or calf) could be slaughtered only on obtaining a certificate. The bans, as imposed by the three legislations were the subject matter of controversy.

The challenge to the constitutional validity of the three legislations was founded on the following three grounds, as was dealt with in the judgment : (i) that the total ban offended the religion of the Muslims as the sacrifice of a cow on a particular day is enjoined or sanctioned by Islam; (ii) that such ban offended the fundamental right guaranteed to the Kasais (Butchers) under Article 19(1)(g) and was not a reasonable and valid restriction on their right; and (iii) that a total ban was not in the interest of the general public. On behalf of the States, heavy reliance was placed on Article 48 of the Constitution to which the writ petitioners responded that under Article 37 the Directive Principles were not enforceable by any court of law and, therefore, Article 48 had no relevance for the purpose of determining the constitutional validity of the impugned legislations which were alleged to be violative of the fundamental rights of the writ petitioners.

Dealing with the challenge to the constitutional validity of the legislations, their Lordships reiterated the well accepted proposition based on several pronouncements of this Court that there is always a presumption in favour of the constitutionality of an enactment and that the burden lies upon him who attacks it to show that there has been a clear violation of the constitutional

principles. The legislative wisdom as expressed in the impugned enactment can be pressed into service to support the presumption. Chief Justice S.R. Das spoke for the Constitution Bench and held :- (i) that a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male or female, was quite reasonable and valid and is in consonance with the Directive Principles laid down in Article 48; (ii) that a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are capable of being used as milch or draught cattle was also reasonable and valid; and (iii) that a total ban on slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals could not be supported as reasonable in the interests of the general public and was invalid.

The first ground of challenge was simply turned down due to the meagre materials placed before their Lordships and the bald allegations and denials made by the parties. No one specially competent to expound the religious tenets of Islam filed any affidavit and no reference was made to any particular Surah of the Holy Quran which, in terms, requires the sacrifice of a cow. It was noticed that many Muslims do not sacrifice cow on the BakrI'd day. Their Lordships stated, inter alia :-

"It is part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example. Similarly Emperors Akbar, Jehangir, and Ahmad Shah, it is said, prohibited cow slaughter. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders. Three of the members of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cows. We have, however, no material on the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners." (p.651)

In State of West Bengal and Ors. v. Ashutosh Lahiri, (1995) 1 SCC 189, this Court has noted that sacrifice of any animal by muslims for the religious purpose on BakrI'd does not include slaughtering of cow as the only way of carrying out that sacrifice. Slaughtering of cow on BakrI'd is neither essential to nor necessarily required as part of the religious ceremony. An optional religious practice is not covered by Article 25(1). On the contrary, it is common knowledge that cow and its progeny, i.e., bull, bullocks and calves are worshipped by Hindus on specified days during Diwali and other festivals like Makr-Sankranti and Gopashtmi. A good number of temples are to be found where the statue of 'Nandi' or 'Bull' is regularly worshipped. However, we do not propose to delve further into the question as we must state, in all fairness to the learned counsel for the parties, that no one has tried to build any argument either in defence or in opposition to the judgment appealed against by placing reliance on religion or Article 25 of

the Constitution.

Dealing with the challenge founded on Article 14 of the Constitution, their Lordships reiterated the twin tests on the anvil of which the reasonability of classification for the purpose of legislation has to be tested, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that such differentia must have a rational relation to the object sought to be achieved by the statute in question (p.652). Applying the twin tests to the facts of the cases before them, their Lordships held that it was quite clear that the objects sought to be achieved by the impugned Acts were the preservation, protection and improvement of livestocks. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for the agricultural economy of this country. Female buffaloes yield a large quantity of milk and are, therefore, well looked after and do not need as much protection as cows yielding a small quantity of milk require. As draught cattle, male buffaloes are not half as useful as bullocks. Sheep and goat give very little milk compared to the cows and the female buffaloes and have practically no utility as draught animals. These different categories of animals being susceptible of classification into separate groups on the basis of their usefulness to society, the butchers who kill each category may also be placed in distinct classes according to the effect produced on society by the carrying on of their respective occupations (p. 653). Their Lordships added :-

"The attainment of these objectives may well necessitate that the slaughterers of cattle should be dealt with more stringently than the slaughterers of, say, goats and sheep. The impugned Acts, therefore, have adopted a classification on sound and intelligible basis and can quite clearly stand the test laid down in the decisions of this Court. Whatever objections there may be against the validity of the impugned Acts the denial of equal protection of the laws does not, prima facie, appear to us to be one of them. In any case, bearing in mind the presumption of constitutionality attaching to all enactments founded on the recognition by the court of the fact that the legislature correctly appreciates the needs of its own people there appears to be no escape from the conclusion that the petitioners have not discharged the onus that was on them and the challenge under Article 14 cannot, therefore, prevail." (p. 653)

The challenge to the constitutional validity founded under Article 14 was clearly and in no unmistaken terms turned down.

The third contention, that is, whether the "total prohibition" could be sustained as a reasonable restriction on the fundamental right of the butchers to slaughter animals of their liking or in which they were trading, was dealt with in great detail. This is the aspect of the decision of the Constitution Bench in Quareshi-I which, in the submission of the learned senior counsel for the appellants, was not correctly decided and, therefore, calls for reconsideration. The question was dealt with by their Lordships from very many angles. Whether the restrictions permissible under clause (6) of Article 19 may extend to "total prohibition" ___ was treated by their Lordships as a vexed question and was left open without expressing any final

opinion as their Lordships chose to concentrate on the issue as to whether the restriction was at all reasonable in the interests of the general public, de hors the fact whether it could be held to be partial or total.

Their Lordships referred to a lot of documentary evidence which was produced before them, such as (i) the figures of 1951 Animals' Census; (ii) Report on the Marketing of Cattle in India issued by the Directorate of Marketing and Inspection, Ministry of Goods and Agriculture, Government of India, 1956; and (iii) the figures given in the First and Second Five Years Plans and so on. Their Lordships concluded that if the purpose of sustaining the health of the nation by the usefulness of the cow and her progeny was achieved by the impugned enactments the restriction imposed thereby could be held to be reasonable in the interest of the general public.

Their Lordships referred to other documents as well. The findings of fact arrived at, based on such evidence may briefly be summed up. In the opinion of their Lordships, cow progeny ceased to be useful as a draught cattle after a certain age and they, although useful otherwise, became a burden on the limited fodder available which, but for the so-called useless animals, would be available for consumption by milch and draught animals. The response of the States in setting up Gosadans (protection home for cow and cow progeny) was very poor. It was on appreciation of the documentary evidence and the deduction drawn therefrom which led their Lordships to conclude that in spite of there being a presumption in favour of the validity of the legislation and respect for the opinion of the legislatures as expressed by the three impugned enactments, they were inclined to hold that a total ban of the nature imposed could not be supported as reasonable in the interests of the general public.

While dealing with the submissions made by the learned senior counsel before us, we would once again revert to this judgment. It would suffice to observe here that, excepting for one limited ground, all other grounds of challenge to the constitutional validity of the impugned enactments had failed.

In Abdul Hakim Quraishi & Ors. v. State of Bihar, (1961) 2 SCR 610 (hereinafter referred to as Quraishi-II) once again certain amendments made by the Legislatures of the States of Bihar, Madhya Pradesh and Uttar Pradesh were put in issue. The ground of challenge was confined to Article 19(1)(g) read with Article 19(6). The ban as imposed by the impugned Act was once again held to be 'total' and hence an unreasonable restriction. The Constitution Bench, by and large, chose to follow the dictum of this Court in Quareshi-I.

In Mohammed Faruk v. State of Madhya Pradesh & Ors., (1969) 1 SCC 853, the State Government issued a notification whereby the earlier notification issued by the Jabalpur Municipality which permitted the slaughter of bulls and bullocks along with other animals was recalled. Para 6 of the judgment notes the anguish of the Constitution Bench, as in the opinion of their Lordships, the case was apparently another attempt, though on a restricted scale, to circumvent the judgment of this Court in Quareshi-I. Vide para 9, their Lordships have noticed the decision of this Court in Narendra Kumar & Ors. v. The Union of India and Ors., (1960) 2 SCR 375, which upholds the view that the term "restriction" in Articles 19(5) and 19(6) of the Constitution includes cases of

"prohibition" also. Their Lordships drew a distinction between cases of "control" and "prohibition" and held that when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone would ensure the maintenance of the general public interest lies heavily upon the State. As the State failed in discharging that burden, the notification was held liable to be struck down as imposing an unreasonable restriction on the fundamental right of the petitioners.

In Haji Usmanbhai Hassanbhai Qureshi and Ors. v. State of Gujarat, (1986) 3 SCC 12 (hereinafter referred to as 'Qureshi-III') the constitutional validity of the Bombay Act as amended by Gujarat Act 16 of 1961 was challenged. The ban prohibited slaughter of bulls and bullocks below the age of 16 years. The petitioners pleaded that such a restriction on their right to carry on the trade or business in beef and allied articles was unreasonable. Yet another plea was urged that the total ban offended their religion as qurbani (sacrifice) at the time of BakrI'd or Id festival as enjoined and sanctioned by Islam. The High Court rejected the challenge on both the grounds. The writ petitioners came in appeal to this Court. The appeal was dismissed. While doing so, this Court took note of the material made available in the form of an affidavit filed by the Under Secretary to the Government of Gujarat, Agriculture, Forest and Cooperation Department wherein it was deposed that because of improvement and more scientific methods of cattle breeding and advancement in the science of looking after the health of cattle in the State of Gujarat, today a situation has been reached wherein the cattle remain useful for breeding, draught and other agricultural purposes above the age of 16 years as well. As the bulls and bullocks upto the 16 years of age continued to be useful, the prescription of the age of 16 years up to which they could not be slaughtered was held to be a reasonable restriction, keeping in mind the balance which has to be struck between public interest which requires useful animals to be preserved, and permitting the appellants (writ petitioners) to carry on their trade and profession. The test of reasonableness of the restriction on the fundamental right guaranteed by Article 19(1)(g) was held to have been satisfied.

The challenge based on Article 14 of the Constitution alleging the impugned legislation to be discriminatory, as it was not uniform in respect of all cattle, was rejected.

The Court also held that buffaloes and their progeny, on the one hand and cows and their progeny, on the other hand constitute two different classes and their being treated differently does not amount to hostile discrimination.

In Hashmattullah v. State of M.P. and Others, (1996) 4 SCC 391, vires of M.P. Krishik Pashu Parirakshan (Sanshodhan) Adhiniyam, 1991 imposing a total ban on the slaughter of bulls and bullocks in the State of Madhya Pradesh was challenged. The validity of the amending Act was upheld by the High Court. The writ petitioners came up in appeal to this Court which was allowed and the amending Act was struck down as ultra vires the Constitution.

In State of West Bengal and others v. Ashutosh Lahiri and Others, (1995) 1 SCC 189, the legislation impugned therein permitted slaughter of cows on the occasion of BakrI'd subject to an exemption in that regard being allowed by the State Government. The power to grant such an exemption was challenged. The High Court allowed the writ petition and struck

down the power of the State Government to grant such an exemption. There was a total ban imposed on the slaughter of healthy cows and other animals mentioned in the schedule under Section 2 of the Act. The State of West Bengal appealed. On a review of earlier decisions of this Court, the three-Judge Bench concluded that it was a settled legal position that there was no fundamental right of Muslims to insist on slaughter of healthy cows on the occasion of BakrI'd. The contention that not only an essential religious practice under Article 25(1) of Constitution, but even optional religious practice could be permitted, was discarded. The Court held \026 "We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on BakrI'd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on BakrI'd."

Issues in Present Set of Appeals

Though there is no explicit concession given but it became clear during the course of prolonged hearing before us that the decision of this case hinges much on the answer to the question whether the view of this Court in Quareshi-I is to be upheld or not. While the submission of the learned senior counsel for the appellants has been that, to the extent the Constitution Bench in Quareshi-I holds the total ban on slaughter of cow progeny to be unconstitutional, it does not lay down good law for various reasons, the learned senior counsel for the writ petitioners-respondents has submitted that Quareshi-I leads a chain of five decisions of this Court which in view of the principle of stare decisis, this Court should not upset. The learned senior counsel for the appellants find following faults with the view taken by this Court in Quareshi-I, to the extent to which it goes against the appellants:-

(1) Quareshi-I holds Directive Principles of State Policy to be unenforceable and subservient to the Fundamental Rights and, therefore, refuses to assign any weight to the Directive Principle contained in Article 48 of the Constitution and refuses to hold that its implementation can be a valid ground for proving reasonability of the restriction imposed on the Fundamental Right guaranteed by Article 19(1)(g) of the Constitution \026 a theory which stands discarded in a series of subsequent decisions of this Court.

(2) What has been noticed in Quareshi-I is Article 48 alone; Article 48A and Article 51A(g) were not noticed as they were not available then, as they were introduced in the Constitution by Forty-second Amendment with effect from 3.1.1977.

(3) The meaning assigned to "other milch and draught cattle" in Quareshi-I is not correct. Such a narrow view as has been taken in Quareshi-I does not fit into the scheme of the Constitution and, in particular, the spirit of Article 48.

(4) Quareshi-I does not assign the requisite weight to the facts contained in the Preamble and Statement of Objects and Reasons of the enactments impugned therein.

(5) 'Restriction' and 'Regulation' include 'Prohibition' and a partial restraint does not amount to total prohibition. Subsequent to the decision in Quareshi-I the trend of judicial decisions in this

area indicates that regulation or restriction within the meaning of Articles 19(5) and 19(6) of the Constitution includes total prohibition - the question which was not answered and left open in Quareshi-I.

(6) In spite of having decided against the writ petitioners on all their principal pleas, the only ground on which the constitutional validity of the impugned enactments was struck down in Quareshi-I is founded on the finding of facts that cow progeny ceased to be useful after a particular age, that preservation of such 'useless cattle' by establishment of gosadan was not a practical and viable proposition, that a large percentage of the animals, not fit for slaughter, are slaughtered surreptitiously outside the municipal limits, that the quantum of available fodder for cattle added with the dislodgment of butchers from their traditional profession renders the total prohibition on slaughter not in public interest. The factual situation has undergone a drastic change since then and hence the factual foundation, on which the legal finding has been constructed, ceases to exist depriving the later of all its force.

The learned senior counsel for the appellants further submitted that Quareshi-I forms the foundation for subsequent decisions and if the very basis of Quareshi-I crumbles, the edifice of subsequent decisions which have followed Quareshi-I would also collapse. We will examine the validity of each of the contentions so advanced and at the end also examine whether the principle of stare decisis prevents us from reopening the question answered in favour of writ petitioners in Quareshi-I.

PART \026 II

Question-1. Fundamental Rights and Directive Principles:-

"It was the Sapru Committee (1945) which initially suggested two categories of rights: one justiciable and the other in the form of directives to the State which should be regarded as fundamental in the governance of the country \005 Those directives are not merely pious declarations. It was the intention of the framers of the Constitution that in future both the Legislature and the Executive should not merely pay lip service to these principles but they should be made the basis of all legislative and executive actions that the future Government may be taking in matter of governance of the country. (Constituent Assembly Debates, Vol.7, at page 41)" (See: The Constitution of India, D.J. De, Second Edition, 2005, p.1367). If we were to trace the history of conflict and irreconciliability between Fundamental Rights and Directive Principles, we will find that the development of law has passed through three distinct stages.

To begin with, Article 37 was given a literal meaning holding the provisions contained in Part IV of the Constitution to be unenforceable by any Court. In The State of Madras v. Srimathi Champakam Dorairajan, 1951 SCR 525, it was held that the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. The view was reiterated in Deep Chand and Anr. v. The State of Uttar Pradesh and Others, 1959 Supp. (2) SCR 8. The Court went on to hold that disobedience to Directive Principles cannot affect the legislative power of the State. So was the view taken

in In Re : The Kerala Education Bill, 1957 , 1959 SCR 995.

With L.C. Golak Nath and others v. State of Punjab and Another, (1967) 2 SCR 762, the Supreme Court departed from the rigid rule of subordinating Directive Principles and entered the era of harmonious construction. The need for avoiding a conflict between Fundamental Rights and Directive Principles was emphasized, appealing to the legislature and the courts to strike a balance between the two as far as possible. Having noticed Champakam (supra) even the Constitution Bench in Quareshi-I chose to make a headway and held that the Directive Principles nevertheless are fundamental in the governance of the country and it is the duty of the State to give effect to them. "A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Part III will be a 'mere rope of sand'." Thus, Quareshi-I did take note of the status of Directive Principles having been elevated from 'sub-ordinate' or 'sub-servient' to 'partner' of Fundamental Rights in guiding the nation.

His Holiness Kesavananda Bharati Sripadagalvaru and Anr. v. State of Kerala and Anr., (1973) 4 SCC 225, a thirteen-Judge Bench decision of this Court is a turning point in the history of Directive Principles jurisprudence. This decision clearly mandated the need for bearing in mind the Directive Principles of State Policy while judging the reasonableness of the restriction imposed on Fundamental Rights. Several opinions were recorded in Kesavananda Bharati and quoting from them would significantly increase the length of this judgment. For our purpose, it would suffice to refer to the seven-Judge Bench decision in Pathumma and Others v. State of Kerala and Ors., (1978) 2 SCC 1, wherein the learned Judges neatly summed up the ratio of Kesavananda Bharati and other decisions which are relevant for our purpose. Pathumma (supra) holds :-

"(1) Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people, which the legislature, in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. This Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interests of society so that when such a right clashes with a larger interest of the country it must yield to the latter.(Para 5)

(2) The Legislature is in the best position to understand and appreciate the needs of the people as enjoined in the Constitution. The Court will interfere in this process only when the statute is clearly violative of the right

conferred on a citizen under Part III or when the Act is beyond the legislative competence of the legislature. The courts have recognised that there is always a presumption in favour of the constitutionality of the statutes and the onus to prove its invalidity lies on the party which assails it. (Para 6)

(3) The right conferred by Article 19(1)(f) is conditioned by the various factors mentioned in clause (5). (Para 8)

(4) The following tests have been laid down as guidelines to indicate in what particular circumstances a restriction can be regarded as reasonable:

(a) In judging the reasonableness of the restriction the court has to bear in mind the Directive Principles of State Policy. (Para 8)

(b) The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirements of the interests of the general public. The legislature must take intelligent care and deliberation in choosing the course which is dictated by reason and good conscience so as to strike a just balance between the freedom in the article and the social control permitted by the restrictions under the article. (Para 14)

(c) No abstract or general pattern or fixed principle can be laid down so as to be of universal application. It will have to vary from case to case and having regard to the changing conditions, the values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which must enter into the judicial verdict. (Para 15)

(d) The Court is to examine the nature and extent, the purport and content of the right, the nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit conferred on the person or the community for whose benefit the legislation is passed. (Para 18)

(e) There must be a direct and proximate nexus or a reasonable connection between the restriction

imposed and the object which is sought to be achieved. (Para 20)

(f) The needs of the prevailing social values must be satisfied by the restrictions meant to protect social welfare. (Para 22)

(g) The restriction has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by the statute. In other words, the Court must see whether the social control envisaged by Article 19 (1) is being effectuated by the restrictions imposed on the fundamental right. However important the right of a citizen or an individual may be it has to yield to the larger interests of the country or the community. (Para 24)

(h) The Court is entitled to take into consideration matters of common report history of the times and matters of common knowledge and the circumstances existing at the time of the legislation for this purpose. (Para 25)"
(underlining by us)

In State of Kerala and Anr. v. N.M. Thomas and Ors., (1976) 2 SCC 310, also a seven-Judge Bench of this Court culled out and summarized the ratio of this Court in Kesavananda Bharati. Fazal Ali, J extracted and set out the relevant extract from the opinion of several Judges in Kesavananda Bharati and then opined:
"In view of the principles adumbrated by this Court it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles. So far as the courts are concerned where there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III, which in fact supplement each other, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. Once this basic fact is kept in mind, the interpretation of Articles 14 and 16 and their scope and ambit become as clear as day."

The message of Kesavananda Bharati is clear. The interest of a citizen or section of a community, howsoever important, is secondary to the interest of the country or community as a whole. For judging the reasonability of restrictions imposed on Fundamental Rights the relevant considerations are not only those as stated in Article 19 itself or in Part-III of the Constitution; the Directive Principles stated in Part-IV are also relevant. Changing factual conditions and State policy, including the one reflected in the impugned enactment, have to be considered and given weightage to by the courts while deciding the constitutional validity of legislative enactments. A restriction placed on any Fundamental Right, aimed at securing Directive Principles will be held as reasonable and hence intra vires subject to two limitations : first, that it does not run in clear conflict with the fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution.

In Municipal Corporation of the City of Ahmedabad & Ors. v. Jan Mohammed Usmanbhai & Anr., (1986) 3 SCC 20, what was impugned before the High Court was a standing order issued by the Municipal Commissioner of the State of Ahmedabad, increasing the number of days on which slaughter houses should be kept closed to seven, in supersession of the earlier standing order which directed the closure for only four days. The writ petitioner, a beef dealer, challenged the constitutional validity of the impugned standing orders (both, the earlier and the subsequent one) as violative of Articles 14 and 19(1)(g) of the Constitution. The challenge based on Articles 14 of the Constitution was turned down both by the High Court and the Supreme Court. However, the High Court had struck down the seven days closure as not "in the interests of the general public" and hence not protected by Clause (6) of Article 19 of the Constitution. In appeal preferred by the Municipal Corporation, the Constitution Bench reversed the Judgment of the High Court and held that the objects sought to be achieved by the impugned standing orders were the preservation, protection and improvement of live-stock, which is one of the Directive Principles. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for our agricultural economy. They form a separate class and are entitled to be treated differently from other animals such as goats and sheep, which are slaughtered. The Constitution Bench ruled that the expression "in the interests of general public" is of a wide import covering public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

In Workmen of Meenakshi Mills Ltd. and Others. v. Meenakshi Mills Ltd. and Anr. , (1992) 3 SCC 336, the Constitution Bench clearly ruled (vide para 27) \026 "Ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest." Similar view is taken in Papnasam Labour Union v. Madura Coats Ltd. and Anr. , (1995) 1 SCC 501.

Directive Principles

Long back in The State of Bombay and anr. v. F.N. Balsara, 1951 SCR 682, a Constitution Bench had ruled that in judging the reasonableness of the restrictions imposed on the Fundamental Rights, one has to bear in mind the Directive

Principles of State Policy set-forth in Part IV of the Constitution, while examining the challenge to the constitutional validity of law by reference to Article 19(1)(g) of the Constitution.

In a comparatively recent decision of this Court in M.R.F. Ltd. v. Inspector, Kerala Govt. and Ors., (1998) 8 SCC 227, this Court, on a conspectus of its various prior decisions summed up principles as 'clearly discernible', out of which three that are relevant for our purpose, are extracted and reproduced hereunder.

"13. On a conspectus of various decisions of this Court, the following principles are clearly discernible:

(1) While considering the reasonableness of the restrictions, the court has to keep in mind the Directive Principles of State Policy.

xxx xxx xxx xxx

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

xxx xxx xxx xxx

(6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise. (See: Kavalappara Kottarathil Kochuni Vs. State of Madras and Kerala, (1960) 3 SCR 887; O.K. Ghosh Vs. E.X. Joseph, 1963 Supp. (1) SCR 789)"

Very recently in Indian Handicrafts Emporium and Ors. v. Union of India and Ors., (2003) 7 SCC 589, this Court while dealing with the case of a total prohibition reiterated that 'regulation' includes 'prohibition' and in order to determine whether total prohibition would be reasonable, the Court has to balance the direct impact on the fundamental right of the citizens as against the greater public or social interest sought to be ensured. Implementation of the Directive Principles contained in Part IV is within the expression of 'restriction in the interests of the general public'.

Post Kesavananda Bharati so far as the determination of the position of Directive Principles, vis-a-vis Fundamental Rights are concerned, it has been an era of positivism and creativity. Article 37 of the Constitution which while declaring the Directive Principles to be unenforceable by any Court goes on to say \026 "that they are nevertheless fundamental in the governance of the country." Several clauses of Article 37 themselves need to be

harmoniously construed assigning equal weightage to all of them. The end part of Article 37 \026 "It shall be the duty of the State to apply these principles in making laws" is not a pariah but a constitutional mandate. The series of decisions which we have referred to hereinabove and the series of decisions which formulate the 3-stages of development of the relationship between Directive Principles and Fundamental Rights undoubtedly hold that, while interpreting the interplay of rights and restrictions, Part-III (Fundamental Rights) and Part-IV (Directive Principles) have to be read together. The restriction which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the chapter on Directive Principles of State Policy can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the Fundamental Rights.

Question \026 2 Fundamental Rights and Articles 48, 48-A and 51-A (g) of Constitution

Articles 48, 48-A and 51-A(g) (relevant clause) of the Constitution read as under :-

"48. Organisation of agriculture and animal husbandry.\027The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

48-A. Protection and improvement of environment and safeguarding of forests and wild life.\027The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A. Fundamental duties.\027It shall be the duty of every citizen of India\027

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

Articles 48-A and 51-A have been introduced into the body of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3.1.1977. These Articles were not a part of the Constitution when Quareshi-I, Quraishi-II and Mohd. Faruk’s cases were decided by this Court. Further, Article 48 of the Constitution has also been assigned a higher weightage and wider expanse by the Supreme Court post Quareshi-I. Article 48 consists of two parts. The first part enjoins the State to "endeavour to organize agricultural and animal husbandry" and that too "on modern and scientific lines". The emphasis is not only on ’organization’ but also on ’modern and scientific lines’. The subject is ’agricultural and animal husbandry’. India is an agriculture based economy. According to 2001 census, 72.2% of the population still lives in villages (See- India Vision 2020, p.99) and survives for its livelihood on agriculture, animal husbandry and related occupations. The second part of Article 48 enjoins the State, de hors the generality of the mandate contained in its first part, to take steps, in particular, "for preserving and improving the breeds and prohibiting the slaughter of cows and calves and

other milch and draught cattle".

Article 48-A deals with "environment, forests and wild life". These three subjects have been dealt with in one Article for the simple reason that the three are inter-related. Protection and improvement of environment is necessary for safeguarding forests and wild life, which in turn protects and improves the environment. Forests and wild life are clearly inter-related and inter-dependent. They protect each other.

Cow progeny excreta is scientifically recognized as a source of rich organic manure. It enables the farmers avoiding the use of chemicals and inorganic manure. This helps in improving the quality of earth and the environment. The impugned enactment enables the State in its endeavour to protect and improve the environment within the meaning of Article 48A of the Constitution.

By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.

In AIIMS Students' Union v. AIIMS and Ors., (2002) 1 SCC 428, a three-Judge Bench of this Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State.

In Mohan Kumar Singhania & Ors. v. Union of India & Ors., 1992 Supp (1) SCC 594, a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A(j) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties.

In State of U.P. v. Yamuna Shanker Misra & Ors., (1997) 4 SCC 7, this Court interpreted the object of writing the confidential reports and making entries in the character rolls by deriving support from Article 51-A(j) which enjoins upon every citizen the primary duty to constantly endeavour to strive towards excellence, individually and collectively.

In Rural Litigation and Entitlement Kendra & Ors. v. State of Uttar Pradesh & Ors., 1986 (Supp) SCC 517, a complete ban and closing of mining operations carried on in the Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-A(g) of the Constitution. The Court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation of the State as well as of the individuals.

In T.N. Godavarman Thirumalpad v. Union of India & Ors., (2002) 10 SCC 606, a three-Judge Bench of this Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures".

In State of W.B. & Ors. v. Sujit Kumar Rana, (2004) 4 SCC 129, Articles 48 and 51-A(g) of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role. The decision in Quareshi-I in which the relevant provisions of the three impugned legislations was struck down on the singular ground of lack of reasonability, would have decided otherwise if only Article 48 was assigned its full and correct meaning and due weightage was given thereto and Articles 48-A and 51-A(g) were available in the body of the Constitution.

Question \026 3 : Milch and draught cattle, meaning of, in Article 48

Article 48 employs the expression 'cows and calves and other milch and draught cattle'. What meaning is to be assigned to the expression 'milch and draught cattle'?

The question is whether when Article 48 precludes slaughter of cows and calves by description, the words 'milch and draught cattle' are described as a like species which should not be slaughtered or whether such species are protected only till they are 'milch or draught' and the protection ceases whenever, they cease to be 'milch or draught', either temporarily or permanently?
According to their inherent genetic qualities, cattle breeds are broadly divided into 3 categories (i) Milch breed (ii) Draught breed, and (iii) Dual purpose breed. Milch breeds include all cattle breeds which have an inherent potential for milk production whereas draught breeds have an inherent potential for draught purposes like pulling, traction of loads etc. The dual purpose breeds have the potential to perform both the above functions.

The term draught cattle indicates "the act of moving loads by drawing or pulling i.e. pull and traction etc. Chambers 20th Century Dictionary defines 'draught animal' as 'one used for

drawing heavy loads'.

Cows are milch cattle. Calves become draught or milch cattle on attaining a particular age. Having specifically spoken of cows and calves, the latter being a cow progeny, the framers of the Constitution chose not to catalogue the list of other milch and draught cattle and felt satisfied by employing a general expression "other milch and draught cattle" which in their opinion any reader of the Constitution would understand in the context of the previous words "cows and calves".

"Milch and draught", the two words have been used as adjectives describing and determining the quality of the noun 'cattle'. The function of a descriptive or qualitative adjective is to describe the shape, colour, size, nature or merits or demerits of the noun which they precede and qualify. In a document like the Constitution, such an adjective cannot be said to have been employed by the framers of the Constitution for the purpose of describing only a passing feature, characteristic or quality of the cattle. The object of using these two adjectives is to enable classification of the noun \026 'cattle' which follows. Had it been intended otherwise, the framers of the Constitution would have chosen a different expression or setting of words.

No doubt, cow ceases to be 'milch' after attaining a particular age. Yet, cow has been held to be entitled to protection against slaughter without regard to the fact that it has ceased to be 'milch'. This constitutional position is well settled. So is the case with calves. Calves have been held entitled to protection against slaughter without regard to their age and though they are not yet fit to be employed as 'draught cattle'. Following the same construction of the expression, it can be said that the words "calves and other milch and draught cattle" have also been used as a matter of description of a species and not with regard to age. Thus, 'milch and draught' used as adjectives simply enable the classification or description of cattle by their quality, whether they belong to that species. This classification is with respect to the inherent qualities of the cattle to perform a particular type of function and is not dependant on their remaining functional for those purposes by virtue of the age of the animal. "Milch and draught cattle" is an expression employed in Article 48 of the Constitution so as to distinguish such cattle from other cattle which are neither milch nor draught.

Any other meaning assigned to this expression is likely to result in absurdity. A milch cattle goes through a life cycle during which it is sometimes milch and sometimes it becomes dry. This does not mean that as soon as a milch cattle ceases to produce milk, for a short period as a part of its life cycle, it goes out of the purview of Article 48, and can be slaughtered. A draught cattle may lose its utility on account of injury or sickness and may be rendered useless as a draught cattle during that period. This would not mean that if a draught cattle ceases to be of utility for a short period on account of sickness or injury, it is excluded from the definition of 'draught cattle' and deprived of the benefit of Article 48.

This reasoning is further strengthened by Article 51A(g) of the Constitution. The State and every citizen of India must have compassion for living creatures. Compassion, according to Oxford Advanced Learners' Dictionary means "a strong feeling of sympathy for those who are suffering and a desire to help them". According to Chambers 20th Century Dictionary, compassion is "fellow \026 feeling, or sorrow for the sufferings of another : pity". Compassion is suggestive of sentiments, a soft feeling, emotions

arising out of sympathy, pity and kindness. The concept of compassion for living creatures enshrined in Article 51A (g) is based on the background of the rich cultural heritage of India \026 the land of Mahatama Gandhi, Vinobha, Mahaveer, Budha, Nanak and others. No religion or holy book in any part of the world teaches or encourages cruelty. Indian society is a pluralistic society. It has unity in diversity. The religions, cultures and people may be diverse, yet all speak in one voice that cruelty to any living creature must be curbed and ceased. A cattle which has served human beings is entitled to compassion in its old age when it has ceased to be milch or draught and becomes so-called 'useless'. It will be an act of reprehensible ingratitude to condemn a cattle in its old age as useless and send it to a slaughter house taking away the little time from its natural life that it would have lived, forgetting its service for the major part of its life, for which it had remained milch or draught. We have to remember : the weak and meek need more of protection and compassion.

In our opinion, the expression 'milch or draught cattle' as employed in Article 48 of the Constitution is a description of a classification or species of cattle as distinct from cattle which by their nature are not milch or draught and the said words do not include milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently. The said words take colour from the preceding words "cows or calves". A specie of cattle which is milch or draught for a number of years during its span of life is to be included within the said expression. On ceasing to be milch or draught it cannot be pulled out from the category of "other milch and draught cattle."

Question - 4 : Statement of Objects and Reasons - Significance and Role thereof

Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the statute, and the evil which the statute was sought to remedy. (See __ Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edition, 2004, at p.218). In State of West Bengal v. Subodh Gopal Bose and Ors., 1954 SCR 587, the Constitution Bench was testing the constitutional validity of the legislation impugned therein. The Statement of Objects and Reasons was used by S.R. Das, J. for ascertaining the conditions prevalent at that time which led to the introduction of the Bill and the extent and urgency of the evil which was sought to be remedied, in addition to testing the reasonableness of the restrictions imposed by the impugned provision. In his opinion, it was indeed very unfortunate that the Statement of Objects and Reasons was not placed before the High Court which would have assisted the High Court in arriving at the right conclusion as to the reasonableness of the restriction imposed. State of West Bengal v. Union of India, (1964) 1 SCR 371, 431-32 approved the use of Statement of Objects and Reasons for the purpose of understanding the background and the antecedent state of affairs leading upto the legislation.

In Quareshi-I itself, which has been very strongly relied upon by the learned counsel for the respondents before us, Chief Justice S.R. Das has held:-
"Pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the

burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. (Para 15).

The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence....". This should be the proper approach for the court but the ultimate responsibility for determining the validity of the law must rest with the court." (Para 21, also see the several decisions referred to therein).
(underlining by us)

The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved.

In Sardar Inder Singh v. The State of Rajasthan, 1957 SCR 605, a Constitution Bench was testing the validity of certain provisions of the Ordinance impugned before and it found it to be repugnant to Article 14 of the Constitution and hence void. At page 620, Venkatarama Aiyar, J. speaking for the Constitution Bench referred to the recitals contained in the Preamble to the Ordinance and the object sought to be achieved by the Ordinance as flowing therefrom and held "that is a matter exclusively for the legislature to determine, and the propriety of that determination is not open to question in courts. We should add that the petitioners sought to dispute the correctness of the recitals in the Preamble. This they cannot clearly do".

Question - 5 : Article 19(1)(g) : 'Regulation' or 'Restriction' includes Total Prohibition; Partial Restraint is not Total Prohibition

Respondents rely on Article 19(1)(g) which deals with the fundamental right to 'practise any profession or to carry on any occupation, trade or business'. This right is subject to Article

19(6) which permits reasonable restrictions to be imposed on it in the interests of the general public.

This raises the question of what is the meaning of the word 'restriction'.

Three propositions are well settled:- (i) 'restriction' includes cases of 'prohibition'; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and (iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right. Reference may be made to Madhya Bharat Cotton Association Ltd. v. Union of India (UOI) and Anr., AIR 1954 SC 634, Krishna Kumar v. Municipal Committee of Bhatapara, (Petition No.660 of 1954 decided on 21st February 1957 by Constitution Bench) (See __ Compilation of Supreme Court Judgments, 1957 Jan-May page 33, available in Supreme Court Judges Library), Narendra Kumar and Ors. v. Union of India (UOI) and Ors., (1960) 2 SCR 375, The State of Maharashtra v. Himmatbhai Narbheram Rao and Ors., (1969) 2 SCR 392, Sushila Saw Mill v. State of Orissa & Ors., (1995) 5 SCC 615, Pratap Pharma (Pvt.) Ltd. & Anr. v. Union of India & Ors., (1997) 5 SCC 87 and Dharam Dutt v. Union of India, (2004) 1 SCC 712.

In Madhya Bharat Cotton Association Ltd. (supra) a large section of traders were completely prohibited from carrying on their normal trade in forward contacts. The restriction was held to be reasonable as cotton, being a commodity essential to the life of the community, and therefore such a total prohibition was held to be permissible. In Himmatbhai Narbheram Rao and Ors. (supra) trade in hides was completely prohibited and the owners of dead animals were required to compulsorily deposit carcasses in an appointed place without selling it. The constitutionality of such prohibition, though depriving the owner of his property, was upheld. The court also held that while striking a balance between rights of individuals and rights of citizenry as a whole the financial loss caused to individuals becomes insignificant if it serves the larger public interest. In Sushila Saw Mill (supra), the impugned enactment imposed a total ban on saw mill business or sawing operations within reserved or protected forests. The ban was held to be justified as it was in public interest to which the individual interest must yield. Similar view is taken in the other cases referred to hereinabove.

In Krishna Kumar (supra), the Constitution Bench held that when the prohibition is only with respect to the exercise of the right referable only in a particular area of activity or relating to a particular matter, there was no total prohibition. In that case, the Constitution Bench was dealing with the case of Adatiyas operating in a market area. A certain field of activity was taken away from them, but they were yet allowed to function as Adatiyas. It was held that this amounts to a restriction on the exercise of writ petitioners' occupation as an Adatiya or a seller of grain but does not amount to a total ban.

In the present case, we find the issue relates to a total prohibition imposed on the slaughter of cow and her progeny. The ban is total with regard to the slaughter of one particular class of cattle. The ban is not on the total activity of butchers

(kasais); they are left free to slaughter cattle other than those specified in the Act. It is not that the writ petitioner-respondents survive only by slaughtering cow progeny. They can slaughter animals other than cow progeny and carry on their business activity. In so far as trade in hides, skins and other allied things (which are derived from the body of dead animal) are concerned, it is not necessary that the animal must be slaughtered to avail these things. The animal, whose slaughter has been prohibited, would die a natural death even otherwise and in that case their hides, skins and other parts of body would be available for trade and industrial activity based thereon.

We hold that though it is permissible to place a total ban amounting to prohibition on any profession, occupation, trade or business subject to satisfying the test of being reasonable in the interest of the general public, yet, in the present case banning slaughter of cow progeny is not a prohibition but only a restriction.

Question - 6 : Slaughter of cow progeny, if in public interest

As we have already indicated, the opinion formed by the Constitution Bench of this Court in Quareshi-I is that the restriction amounting to total prohibition on slaughter of bulls and bullocks was unreasonable and was not in public interest. We, therefore, proceed to examine the evidence available on record which would enable us to answer questions with regard to the 'reasonability' of the imposed restriction qua 'public interest'.

The facts contained in the Preamble and the Statement of Objects and Reasons in the impugned enactment highlight the following facts:-

(i) it is established that cow and her progeny sustain the health of the nation;
(ii) the working bullocks are indispensable for our agriculture for they supply power more than any other animal (the activities for which the bullocks are usefully employed are also set out);
(iii) the dung of the animal is cheaper than the artificial manures and extremely useful of production of biogas;
(iv) it is established that the backbone of Indian agriculture is the cow and her progeny and they have on their back the whole structure of the Indian agriculture and its economic system;
(v) the economy of the State of Gujarat is still predominantly agricultural. In the agricultural sector use of animals for milch, draught, breeding or agricultural purposes has great importance. Preservation and protection of agricultural animals like bulls and bullocks needs emphasis. With the growing adoption of non-conventional energy sources like biogas plants, even waste material have come to assume considerable value. After the cattle cease to breed or are too old to work, they still continue to give dung for fuel, manure and biogas and, therefore, they cannot be said to be useless.

Apart from the fact that we have to assume the above-stated facts as to be correct, there is also voluminous evidence available on record to support the above said facts. We proceed to notice few such documents.

Affidavits

Shri J.S. Parikh, Deputy Secretary, Agriculture Cooperative and Rural Development, Department, State of Gujarat, filed three affidavits in the High Court of Gujarat in Special Civil Application No. 9991 of 1993. The first affidavit was filed on 20th October, 1993, wherein the following facts are discernible and mentioned as under:

(i) With the improved scientific animal husbandry services in the State, the average longivity of animals has considerably increased. In the year 1960, there were only 456 veterinary dispensaries and first aid veterinary centers etc, whereas in the year 1993, there are 946 veterinary dispensaries and first aid veterinary centers etc. There were no mobile veterinary dispensaries in 1960 while there are 31 mobile veterinary dispensaries in the State in 1993. In addition, there are around 467 centres for intensive cattle development where besides first aid veterinary treatment, other animal husbandry inputs of breeding, food or development etc. are also provided. In the year 1960, five lakh cattles were vaccinated whereas in the year 1992-93 around 200 lakh animals are vaccinated to provide life saving protection against various fatal diseases. There were no cattle food compounding units preparing cattle food in the year 1960, while in the year 1993 there are ten cattle food factory producing 1545 MT of cattle food per day. As a result of improved animal husbandry services, highly contagious and fatal disease of Rinder Pest is controlled in the state and that the deadly disease has not appeared in the last three years.

(ii) Because of various scientific technologies namely, proper cattle feeding, better medical and animal husbandry services, the longevity of the cattle in the State has considerably increased.

(iii) The population of bullock is 27.59 lakhs. Over and above agricultural work, bullocks are useful for other purposes also. They produce dung which is the best organic measure and is cheaper than chemical manure. It is also useful for production of bio-gas.

(iv) It is estimated that daily production of manure by bullocks is about 27,300 tonnes and bio-gas production daily is about 13.60 cubic metres. It is also estimated that the production of bio-gas from bullock dung fulfil the daily requirement of 54.78 lakh persons of the

State if whole dung production is utilized. At present, 1,91,467 bio-gas plants are in function in the State and about 3-4 lakhs persons are using bio-gas in the State produced by these plants.

(v) The population of farmers in the State is 31.45 lakhs. Out of which 7.37 lakhs are small farmers, 8 lakhs are marginal farmers, 3.05 lakhs are agricultural labourers and 13.03 lakhs are other farmers. The total land of Gujarat State is 196 lakh hectares and land under cultivation is 104.5 lakh hectares. There are 47,800 tractors by which 19.12 lakh hectares land is cultivated and the remaining 85.38 lakh hectares land is cultivated by using bullocks. It may be mentioned here that all the agricultural operations are not done using tractors. The bullocks are required for some of agricultural operations along with tractors. There are about 7,28,300 bullock carts and there are about 18,35,000 ploughs run by bullocks in the State.

(vi) The figure of slaughter of animals done in 38 recognised slaughter houses are as under:

Year	Bullock/Bull	Buffalo	Sheep	Goat
1990-91	9,558	41,088	1,82,269	2,22,507
1991-92	9,751	41,882	2,11,245	2,20,518
1992-93	8,324	40,034	1,13,868	1,72,791

The above figures show that the slaughter of bullocks above the age of 16 years is done in the State in very small number. The animals other than bullocks are slaughtered in large number. Hence, the ban on the slaughter of cow and cow progeny will not affect the business of meat production significantly. Therefore, the persons engaged in this profession will not be affected adversely.

Thereafter two further affidavits were filed by Shri J.S. Parikh, abovesaid, on 17th March, 1998, wherein the following facts are mentioned :

(i) there are about 31.45 lakhs land holders in Gujarat. The detailed classifications of the land holders are as under:-

Sl. No.	Details of land holders	No. of land holders
1.	01 hectare	8.00 lakhs
2.	1-2 hectares	7.37 lakhs
3.	2 and above	16.08 lakhs

(ii) almost 50 per cent of the land holdings are less than 2 hectares; tractor keeping is not affordable to small farmers. For economic maintenance of tractors, one should have large holding of land. Such land holders are only around 10 per cent of the total land holders. Hence the farmers with small land holdings require bullocks as motive power for their agricultural operations and transport;

(iii) the total cultivable land area of Gujarat State is about 124 lakh hectares. Considering that a pair of bullocks is required for ploughing 10 acres of land the bullock requirement for ploughing purpose alone is 5.481 million and approximately equal number is required for carting. According to the livestock census 1988 of Gujarat State, the availability of indigenous bullocks is around 2.84 millions. Thus the availability of bullocks as a whole on percentage of requirement works out to be about 25 per cent. In this situation, the State has to preserve each single bull and bullock that is available to it;

(iv) it is estimated that bull or bullock at every stage of life supplies 3,500 kgs of dung and 2,000 litres of urine and whereas this quantity of dung can supply 5,000 cubic feet of biogas, 80 M.T. of organic fertilizer, the urine can supply 2,000 litres of pesticides and the use of these products in farming increases the yield very substantially. The value of above contribution can be placed at Rs.20,000/- per year to the owner;

(v) since production of various agricultural crops removes plant nutrients from the soil, they must be replenished with manures to maintain and improve fertility of soil. There are two types of manures which are (i) Organic manures, i.e. natural manures and (ii) Artificial or chemical fertilizer. Amongst the organic manures, farm yard manures is the most valuable organic manure applied to soil. It is the most commonly used organic manure in India. It consists of a mixture of cattle dung, the bedding used in the stable. Its crop increasing value has been recognized from time immemorial (Ref. Hand Book of Agriculture, 1987 by ICAR page 214);

(vi) the importance of organic manure as a source of humus and plant nutrients to increase the fertility level of soils has been well recognised. The organic matter content of cultivated soils of the tropics and sub-tropics is comparatively low due to high temperature and intense microbial activity. The crops remove annually large quantity of plant nutrients from soil. Moreover, Indian soils are poor in organic matter and in major plant nutrients. Therefore, soil humus has to be replenished through periodic addition of organic manure for maintaining soil productivity;

(vii) animals are the source of free availability of farmyard manure, which has all the three elements, i.e. Nitrogen, Phosphoric acid and Potash, needed in fertilizer and at the same time which preserve and enrich the fertility of the soil. In paucity of dung availability, the farmers have to depend upon chemical fertilizers. Investment in chemical fertilizers imposes heavy burden upon the economy. If there is availability of alternate source of organic manure from animals, it is required to be promoted;

(viii) the recent scenario of ultramodern technology of super ovulation, embryo transfer and cloning technique will be of very much use to propagate further even from the incapable or even old animals which are not capable of working or reproducing. These animals on a large scale can be used for research programmes as well as for production of non-conventional energy sources such as biogas and natural fertilizers. At present, there are 19,362 biogas plants installed in the State during 1995-97. On an average, each adult cattle produces 4.00 kg. of dung per day. Out of the total cattle strength of (1992 Census) 67,85,865, the

estimated dung produced is 99,07,363 tonnes;

(ix) India has 74% of rural population, and in Gujarat out of 4.13 crores of human population, there are 1.40 crores of workers which comprises of 47,04,000 farmers and 32,31,000 workers are workers related to livestock and forestry. In Gujarat, there are 9.24 lakhs marginal farmers and 9.15 lakhs of small farmers, according to the 1991-92 census. Animals are reared in few numbers per family and the feed is obtained from the supplementary crop on fodder/agricultural by-products or from grazing in the gaucher land. In Gujarat 8.48 lakh hectares of land is available as permanent pasture and grazing land. An individual cattle-owner does not consider one or two bullocks as an extra burden for his family, even when it is incapable of work or production. Sometimes the unproductive animals are sent to Panjarapoles and Gosadans. In Gujarat, there are 335 Gaushalas and 174 Panjarapoles which are run by non-governmental oranizations and trusts. Formerly farmers mostly kept few animals and, in fact, they are treated as part of their family and maintained till death. It cannot be treated to be a liability upon them or burden on the economy;

(x) butchers are doing their business since generations, but they are not doing only the slaughter of cow class of animals. They slaughter and trade the meat of other animals like buffaloes, sheep, goats, pig and even poultry. In Gujarat there are only 38 registered slaughter houses functioning under various Municipalities/Nagar Panchayats. Beef (meat of cattle) contributes only 1.3% of the total meat groups. Proportion of demand for beef is less in the context of demand for pig, mutton and poultry meat. Slaughtering of bulls and bullocks for the period between 1990-91 and 1993-94 was on an average 9,000;

(xi) number of bullocks have decreased in a decade from 30,70,339 to 28,93,227 as in 1992. A statement showing the amount of dung production for the year 1983-84 to 1996-97 and a statement showing the nature of economy of the State of Gujarat is annexed. The number of bullocks slaughtered per day is negligible compared to other animals, and the business and/or trade of slaughtering bullocks would not affect the business of butchers. By prohibiting slaughter of bullocks the economy is likely to be benefited.

The three affidavits are supported by documents, statements or tables setting out statistics which we have no reason to disbelieve. Neither the High Court has expressed any doubt on the contents of the affidavit nor has the veracity of the affidavits and correctness of the facts stated therein been challenged by the learned counsel for the respondents before us.

In this Court Shri D.P. Amin, Joint Director of Animal Husbandry, Gujarat State, has filed an affidavit. The salient facts stated therein are set out hereunder:

(i) The details of various categories of animals slaughtered since 1997-1998 shows that slaughter of various categories of animals in regulated slaughter houses of Gujarat State has shown a tremendous decline. During the year way back in 1982-83 to 1996-97 the average number of animals slaughtered in regulated slaughter houses was 4,39,141. As against that (previous figure) average number of slaughter of animals in recent 8 years i.e. from 1997-98 to 2004-05 has come down to only 2,88,084. This clearly indicates that there has been a vast change in the meat eating style of people of Gujarat State. It is because of the awareness created among the public due to the threats of dangerous diseases like Bovine Spongiform Encephalopathy commonly known as "Mad Cow disease" B.S.E. which is a fatal disease of cattle meat origin not reported in India. Even at global level people have stopped eating the beef which is known as meat of cattle class animals. This has even affected the trade of meat particularly beef in the America & European countries since last 15 years. Therefore, there is international ban on export-import of beef from England, America & European countries;

(ii) there is reduction in slaughter of bulls & bullocks above the age of 16 years reported in the regulated slaughter houses of Gujarat State. As reported in the years from 1982-83 to 1996-97, the slaughter of bulls & bullocks above the age of 16 years was only 2.48% of the total animals of different categories slaughtered in the State. This percentage has gone down to the level of only 1.10% during last 8 years i.e. 1997-98 to 2004-05 which is very less significant to cause or affect the business of butcher communities;

(iii) India is predominantly agrarian society with nearly >th of her population living in seven lakh rural hamlets and villages, possesses small fragmentary holding (54.6% below 1 hectare 18% with 1-2 hectares). Draft/pack animal contributes more than 5 crores horse power (H.P.) or 33,000 megawatt electric power and shares for/in 68% of agricultural operations, transport & other draft operations. In addition to draft power, 100 million tonnes dung per year improves the soil health and also used as raw material for biogas plant;

(iv) the cattle population in Gujarat in relation to

human population has declined from 315 per 1000 humans in 1961 to 146 per 1,000 humans in 2001 indicating decline in real terms;

(v) in Gujarat 3.28 million draft animal (bullocks 85%) have multifaceted utilities viz. agricultural operations like ploughing, sowing, hoeing, planking, carting, hauling, water lifting, grinding, etc.;

Gujarat State has a very rich cattle population of Kankrej & Gir breed, of which Kankrej bullocks are very well known for its draft power called "Savai Chal";

(vi) considering the utility of aged bullocks above 16 years as draft power a detailed combined study was carried out by Department of Animal Husbandry and Gujarat Agricultural University (Veterinary Colleges S.K. Nagar & Anand). The experiments were carried out within the age group of 16 to 25 years. The study covered different age groups of 156 (78 pairs) bullocks above the age of 16 years. The aged bullocks i.e. above 16 years age generated 0.68 horse power draft output per bullock while the prime bullock generated 0.83 horse power per bullock during carting/hauling draft work in a summer with about more than 42?C temp. The study proves that 93% of aged bullock above 16 years of age are still useful to farmers to perform light & medium draft works. The detailed report is on record;

(vii) by the end of year 2004-05 under the Dept. of Animal Husbandry, there are 14 Veterinary Polyclinics, 515 Vety. Dispensaries, 552 First Aid Vety. Centres and 795 Intensive Cattle Development Project Sub Centers. In all, 1876 institutions were made functional to cater various health care activities to livestock population of State of Gujarat. About two crores of livestock and poultry were vaccinated against various diseases. As a result, the total reported out break of infectious diseases was brought down to around 106 as against 222 in 1992-1993. This shows that State has created a healthy livestock and specifically the longevity of animals has been increased. This has also resulted into the increased milk production of the state, draft power and source of non-conventional energy in terms of increased quantity of dung and urine;

(viii) the value of dung is much more than even the famous "Kohinoor" diamond. An old bullock gives 5 tonnes of dung and 343 pounds of urine in a year which can help in the manufacture of 20 carts load of composed manure. This would be sufficient for manure need of 4 acres of land for crop production. The right to life is a fundamental right and it can be basically protected only with proper

food and feeding and cheap and nutritious food grains required for feeding can be grown with the help of dung. Thus the most fundamental thing to the fundamental right of living for the human being is bovine dung. (Ref. Report of National Commission on Cattle, Vol.III, Page 1063-1064);

(ix) the dung cake as well as meat of bullock are both commercial commodities. If one bullock is slaughtered for its meat (Slaughtering activity) can sustain the butchers trade for only a day. For the next day's trade another bullock is to be slaughtered. But if the bullock is not slaughtered, about 5000-6000 dung cakes can be made out of its dung per year, and by the sale of such dung cake one person can be sustained for the whole year. If a bullock survives even for five years after becoming otherwise useless it can provide employment to a person for five years whereas to a butcher, bullock can provide employment only for a day or two.

(x) Even utility of urine has a great role in the field of pharmaceuticals as well as in the manufacturing of pesticides. The Goseva Ayog, Govt. of Gujarat had commissioned study for "Testing insecticides properties of cow urine against various insect pests". The study was carried out by Dr. G.M. Patel, Principal Investigator, Department of Entomology, C.P. College of Agriculture, S.D. Agricultural University, Sardar Krishi Nagar, Gujarat. The study has established that insecticides formulations prepared using cow urine emerged as the most reliable treatment for their effectiveness against sucking pest of cotton. The conclusion of study is dung & urine of even aged bullocks are also useful and have proved major effect of role in the Indian economy;

(xi) it is stated that availability of fodder is not a problem in the State or anywhere. During drought period deficit is compensated by grass-bank, silo and purchase of fodder from other States as last resources. The sugarcane tops, leaves of banana, baggase, wheat bhoosa and industrial byproducts etc. are available in plenty. A copy of the letter dated 8.3.2004 indicting sufficient fodder for the year 2004, addressed to Deputy Commissioner, Animal Husbandry Government of India is annexed.

Report on draughtability of bullocks above 16 years of age
On 20th June, 2001 the State of Gujarat filed I.A. No. 2/2001 in Civil Appeal Nos. 4937-4940 of 1998, duly supported by an affidavit sworn by Shri D.U. Parmar, Deputy Secretary (Animal Husbandry) Agriculture and Cooperation Department, Government of Gujarat, annexing therewith a report on draughtability of aged bullocks above 16 years of age under field conditions. The study was conducted by the Gujarat Agricultural University Veterinary College, Anand and the Department of Animal Husbandry, Gujarat State, Ahmedabad. The study was

planned with two objectives:

(i) To study the draughtability and utility of aged bullocks above 16 years of age; and
(ii) To compare the draughtability of aged bullocks with bullocks of prime age.

Empirical research was carried out under field conditions in North Gujarat Region (described as Zone-I) and Saurashtra region (described as Zone-II). The average age of aged bullocks under the study was 18.75 years. The number of bullocks/pair used under the study were sufficient to draw sound conclusions from the study. The gist of the findings arrived at, is summed up as under:

1. Farmer’s persuasion

The aged bullocks were utilized for different purposes like agricultural operations (ploughing, planking, harrowing, hoeing, threshing) and transport-hauling of agricultural produce, feeds and fodders of animals, drinking water, construction materials (bricks, stones, sand grits etc.) and for sugarcane crushing/ khandsari making. On an average the bullocks were yoked for 3 to 6 hours per working day and 100 to 150 working days per year. Under Indian conditions the reported values for working days per year ranges from 50 to 100 bullock paired days by small, medium and large farmers. Thus, the agricultural operations-draft output are still being taken up from the aged bullocks by the farmers. The farmers feed concentrates, green fodders and dry fodders to these aged bullocks and maintain the health of these animals considering them an important segment of their families. Farmers love their bullocks.

2. Age, body measurement and body weight

The biometric and body weight of aged bullocks were within the normal range.

3. Horsepower generation/Work output

The aged bullocks on an average generated 0.68 hp/bullock, i.e.18.1% less than the prime/young bullocks (0.83 hp/bullock). The aged bullocks walked comfortably with an average stride length of 1.43 meter and at the average speed of 4.49 km/hr. showing little less than young bullocks. However, these values were normal for the aged bullocks performing light/medium work of carting. These values were slightly lower than those observed in case of prime or young bullocks. This clearly indicates that the aged bullocks above 16 years of age proved their work efficiency for both light as well as medium work in spite of the age bar. In addition to this, the experiment was conducted during the months of May-June, 2000 \026 a stressful summer season. Therefore, these bullocks could definitely generate more work output during winter, being a comfortable season. The aged bullock above 16 years of age performed satisfactorily and disproved that they are unfit for any type of draft output i.e. either agricultural operations, carting or other works.

4. Physiological responses and haemoglobin concentration

These aged bullocks are fit to work for 6 hours (morning 3 hours and afternoon 3 hrs.) per day. Average Hb content (g%) at the start of work was observed to be 10.72 g% and after 3 hours of work 11.14g%, indicating the healthy state of bullocks. The

increment in the haemoglobin content after 3 to 4 hours of work was also within the normal range and in accordance with prime bullocks under study as well as the reported values for working bullocks.

5. Distress symptoms

In the initial one hour of work, 6 bullocks (3.8%) showed panting, while 32.7% after one hour of work. After 2 hour of work, 28.2% of bullocks exhibited salivation. Only 6.4% of the bullocks sat down/lied down and were reluctant to work after completing 2 hours of the work. The results are indicative of the fact that majority of the aged bullocks (93%) worked normally. Summer being a stressful season, the aged bullocks exhibited distress symptoms earlier than the prime/young bullocks. However, they maintained their physiological responses within normal range and generated satisfactory draft power.

The study report submitted its conclusions as under:

"1. The aged bullocks above 16 years of age generated 0.68 horse power draft output per bullock while the prime bullocks generated 0.83 horsepower per bullock during carting-hauling draft work.

2. The aged bullocks worked satisfactorily for the light work for continuous 4 hours during morning session and total 6 hours per day (morning 3 hours and afternoon 3 hours) for medium work.

3. The physiological responses (Rectal temperature, Respiration rate and Pulse rate) and haemoglobin of aged bullocks were within the normal range and also maintained the incremental range during work. However, they exhibited the distress symptoms earlier as compared to prime bullocks.

4. Seven percent aged bullocks under study were reluctant to work and/or lied down after 2 hours of work.

5. The aged bullocks were utilized by the farmers to perform agricultural operations (ploughing, sowing, harrowing, planking, threshing), transport-hauling of agricultural product, feeds and fodders, construction materials and drinking water.

Finally, it proves that majority (93%) of the aged bullocks above 16 years of age are still useful to farmers to perform light and medium draft works."

With the report, the study group annexed album/photographs and cassettes prepared while carrying out the study. Several tables and statements setting out relevant statistics formed part of the report. A list of 16 authentic references originating from eminent authors on the subject under study which were referred to by the study group was appended to the report.

This application (I.A. No. 2/2001) was allowed and the affidavit taken on record vide order dated 20.8.2001 passed by this Court. No response has been filed by any of the respondents controverting the facts stated in the affidavit and the accompanying report. We have no reason to doubt the

correctness of the facts stated therein; more so, when it is supported by the affidavit of a responsible officer of the State Government.

Tenth Five Year Plan (2002-2007) Documents

In the report of the Working Group on Animal Husbandry and Dairy Farming, the Tenth Five Year Plan (2002-2007) dealing with 'the draught breed relevance and improvement', published by the Government of India, Planning Commission in January, 2001, facts are stated in great detail pointing out the relevance of draught breeds and setting out options for improvement from the point of view of the Indian Economy. We extract and reproduce a few of the facts therefrom:

"3.6.12 Relevance of draught breeds and options for improvement

3.6.12.1 In India 83.4 million holdings (78%) are less than 2 ha. where tractors and tillers are uneconomical and the use of animal power becomes inevitable since tractors and tillers are viable only for holdings above 5 ha.. In slushy and water logged fields tractor tiller is not suitable. In narrow terraced fields and hilly regions tractors cannot function. Animal drawn vehicle are suitable for rural areas under certain circumstances/conditions viz., uneven terrain, small loads (less than 3 tons), short distances and where time of loading and unloading is more than travel time or time is not a critical factor and number of collection points/distribution points are large as in case of milk, vegetable, water, oil, etc. In India the energy for ploughing two-thirds of the cultivated area comes from animal power and animal drawn vehicles haul two-thirds of rural transport.

3.6.12.2 The role of cattle as the main source of motive power for agriculture and certain allied operations would continue to remain as important as meeting the requirement of milk in the country. It has been estimated that about 80 million bullocks will be needed. There is, therefore, a need for improving the working efficiency of the bullocks through improved breeding and feeding practices.

3.6.13 Development of Draught Breeds

Focused attention to draft breed will not be possible unless a new scheme is formulated for this purpose.

3.6.13.2 In tracts where there are specialized draught breeds of cattle like Nagori in Rajasthan, Amritmahal and Hallikar in Karnataka, Khillar in Maharashtra etc., selection for improvement in draughtability should be undertaken on a large scale as the cattle breeders in these areas derive a large income by sale of good quality bullocks. Planned efforts should be made for improving the draught capacity and promoting greater

uniformity in the type of the cattle population in the breeding tracts. There is need to intensify investigations to develop yardsticks for objective assessment of draught capacity of bullocks.

3.6.14 Supplementation of fund-flow for cattle and Buffalo development.

3.6.14.2 A number of organizations like NABARD, NDDB, NCDC etc. are also likely to be interested in funding activities relating to cattle and buffalo development in the form of term as loan provided timely return is ensured. Time has now come for exploring such avenues seriously at least on pilot basis in selected areas, where better prospects of recovery of cost of breeding inputs and services exists."

Recognising the fact that the cow and its progeny has a significant role to play in the agricultural and rural economy of the country, the Government felt that it was necessary to formulate measures for their development in all possible ways. In view of the persistent demands for action to be taken to prevent their slaughter, the Government also felt and expressed the need to review the relevant laws of the land relating to protection, preservation, development and well-being of cattle and to take measures to secure the cattle wealth of India.

Yet another document to which we are inclined to make a reference is Mid-Term Appraisal of 10th Five Year Plan (2002-2007) released in June, 2005 by the Government of India (Planning Commission). Vide para 5.80 the report recommends that efforts should be made to increase the growth of bio-pesticides production from 2.5 to 5 per cent over the next five years.

According to the report, Organic farming is a way of farming which excludes the use of chemical fertilizers, insecticides, etc. and is primarily based on the principles of use of natural organic inputs and biological plant protection measures.

Properly managed organic farming reduces or eliminates water pollution and helps conserve water and soil on the farm and thereby enhances sustainability and agro-biodiversity.

Organic farming has become popular in many western countries. There are two major driving forces behind this phenomenon; growing global market for organic agricultural produce due to increased health consciousness; and the premium price of organic produce fetched by the producers.

India has a comparative advantage over many other countries.

The Appraisal Report acknowledged the commencement of the biogas programme in India since 1981-82. Some 35,24,000 household plants have been installed against an assessed potential of 120,00,000 units.

Biogas has traditionally been produced in India from cow dung (gobar gas). However, dung is not adequately and equitably available in villages. Technologies have now been developed for using tree-based organic substrates such as leaf litter, seed starch, seed cakes, vegetable wastes, kitchen wastes

etc. for production of biogas. Besides cooking, biogas can also be used to produce electricity in dual fired diesel engines or in hundred per cent gas engines. Ministry of Non-conventional Energy Sources (MNES) is taking initiatives to integrate biogas programme in its Village Energy Security Program (VESP).

Production of pesticides and biogas depend on the availability of cow-dung.

National Commission on Cattle
Vide its Resolution dated 2nd August, 2001, the Government of India established a National Commission on Cattle, comprising of 17 members.

The Commission was given the follow terms of reference:-

a. To review the relevant laws of the land(Centre as well as States) which relate to protection, preservation, development and well being of cow and its progeny and suggest measures for their effective implementation,

b. To study the existing provisions for the maintenance of Goshalas, Gosadans, Pinjarapoles and other organisations working for protection and development of cattle and suggest measures for making them economically viable,

c. To study the contribution of cattle towards the Indian economy and to suggest ways and means of organising scientific research for maximum utilisation of cattle products and draught animal power in the field of nutrition and health, agriculture and energy, and to submit a comprehensive scheme in this regard to the Central Government,

d. To review and suggest measures to improve the availability of feed and fodder to support the cattle population.

The Committee after extensive research has given a list of recommendations. A few of them relevant in the present case are:-

" 1.The Prohibition for slaughter of cow and its progeny, which would include bull, bullocks, etc., should be included in Fundamental Rights or as a Constitutional Mandate anywhere else, as an Article of Constitution. It should not be kept only in the Directive Principles or/Fundamental duties as neither of these are enforceable by the courts.

2. The amendment of the Constitution should also be made for empowering the Parliament to make a Central Law for the prohibition of slaughter of cow and its progeny and further for prohibition of their transport from one

State to another.

3. The Parliament should then make a Central law, applicable to all States, prohibiting slaughter of cow and its progeny. Violation of the Law should be made a non-bailable and cognizable offence.

xxx xxx xxx

14. The use and production of chemical fertilizers and chemical pesticides should be discouraged, subsidies on these items should be reduced or abolished altogether. The use of organic manure should be subsidized and promoted."

Thus the Commission is of the view that there should be a complete prohibition on slaughter of cow progeny.

Importance of Bovine Dung

The Report of the National Commission on Cattle, ibid, refers to an authority namely, Shri Vasu in several sub-paragraphs of para 12. Shri Vasu has highlighted the unique and essential role of bovine and bovine dung in our economy and has pleaded that slaughter of our precious animals should be stopped. He has in extenso dealt with several uses of dung and its significance from the point of view of Indian society. Dung is a cheap and harmless fertilizer in absence whereof the farmers are forced to use costly and harmful chemical fertilizers. Dung also has medicinal value in Ayurved, the Indian system of medicines.

Continuing Utility of Cattle : Even if the utility argument of the Quareshi’s judgment is accepted, it cannot be accepted that bulls and bullocks become useless after the age of 16. It has to be said that bulls and bullocks are not useless to the society because till the end of their lives they yield excreta in the form of urine and dung which are both extremely useful for production of bio-gas and manure. Even after their death, they supply hide and other accessories. Therefore, to call them ’useless’ is totally devoid of reality. If the expenditure on their maintenance is compared to the return which they give, at the most, it can be said that they become ’less useful’.(Report of the National Commission on Cattle, July 2002, Volume I, p. 279.)

The Report of the National Commission on Cattle has analyzed the economic viability of cows after they stopped yielding milk and it also came to the conclusion that it shall not be correct to call such cows ’useless cattle’ as they still continue to have a great deal of utility. Similar is the case with other cattle as well.

"37. Economic aspects:

37.1 The cows are slaughtered in India because the owner of the cow finds it difficult to maintain her after she stops yielding milk. This is because it is generally believed that milk is the only commodity obtained from cows, which is useful and can be sold in exchange of cash. This notion is totally wrong. Cow yields products other than milk, which are valuable and saleable. Thus the

dung as well as the urine of cow can be put to use by owner himself or sold to persons or organizations to process them. The Commission noticed that there are a good number of organizations (goshalas) which keep the cows rescued while being carried to slaughter houses. Very few of such cows are milk yielding. Such organizations use the urine and dung produced by these cows to prepare Vermi-compost or any other form of bio manure and urine for preparing pest repellents. The money collected by the sale of such products is normally sufficient to allow maintenance of the cows. In some cases, the urine and dung is used to prepare the medical formulations also. The organizations, which are engaged in such activities, are making profits also.

37.2 Commission examined the balance sheet of some such organizations. The expenditure and income of one such organization is displayed here. In order to make accounts simple the amounts are calculated as average per cow per day.

It is obvious that expenditure per cow is Rs. 15-25 cow/day.

While the income from sale is Rs. 25-35 cow-day.

37.3 These averages make it clear that the belief that cows which do not yield milk are unprofitable and burden for the owner is totally false. In fact it can be said that products of cow are sufficient to maintain them even without milk. The milk in such cases is only a by\026product.

37.4 It is obvious that all cow owners do not engage in productions of fertilizers or insect repellents. It can also be understood that such activity may not be feasible for owners of a single or a few cows. In such cases, the cow’s urine and dung may be supplied to such organizations, which utilize these materials for producing finished products required for agricultural or medicinal purpose. Commission has noticed that some organizations which are engaged in production of agricultural and medical products from cow dung and urine do purchase raw materials from nearby cow owner at a price which is sufficient to maintain the cow." (Report of National Commission on Cattle, July 2002, Vol. II, pp.68-69)

A host of other documents have been filed originating from different sources such as Governmental or Semi-governmental, NGOs, individuals or group of individuals, who have carried out researches and concluded that world-over there is an awareness in favour of organic farming for which cattle are indispensable. However, we do not propose to refer to these documents as it

would only add to the length of the judgment. We have, apart from the affidavits, mainly referred to the reports published by the Government of India, whose veracity cannot be doubted.

We do not find any material brought on record on behalf of the respondents which could rebut, much less successfully, the correctness of the deductions flowing from the documented facts and statistics stated hereinabove.

The utility of cow cannot be doubted at all. A total ban on cow slaughter has been upheld even in Quareshi-I. The controversy in the present case is confined to cow progeny. The important role that cow and her progeny play in the Indian Economy was acknowledged in Quareshi-I in the following words:

"The discussion in the foregoing paragraphs clearly establishes the usefulness of the cow and her progeny. They sustain the health of the nation by giving them the life giving milk which is so essential an item in a scientifically balanced diet. The working bullocks are indispensable for our agriculture, for they supply power more than any other animal. Good breeding bulls are necessary to improve the breed so that the quality and stamina of the future cows and working bullocks may increase and the production of food and milk may improve and be in abundance. The dung of the animal is cheaper than the artificial manures and is extremely useful. In short, the back bone of Indian agriculture is in a manner of speaking the cow and her progeny. Indeed Lord Linlithgow has truly said \027 "The cow and the working bullock have on their patient back the whole structure of Indian agriculture." (Report on the Marketing of Cattle in India, p. 20). If, therefore, we are to attain sufficiency in the production of food, if we are to maintain the nation's health, the efficiency and breed of our cattle population must be considerably improved. To attain the above objectives, we must devote greater attention to the preservation, protection and improvement of the stock and organise our agriculture and animal husbandry on modern and scientific lines."

On the basis of the available material, we are fully satisfied to hold that the ban on slaughter of cow progeny as imposed by the impugned enactment is in the interests of the general public within the meaning of clause (6) of Article 19 of the Constitution.

Part - III

Stare Decisis

We have dealt with all the submissions and counter submissions made on behalf of the parties. What remains to be dealt with is the plea, forcefully urged, on behalf of the respondents that this Court should have regard to the principle of stare decisis and should not upturn the view taken in Quareshi-I which has held field ever since 1958 and has been followed in subsequent decisions, which we have already dealt

with hereinabove.

Stare decisis is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudication". This principle is expressed in the maxim "stare decisis et non quieta movere" which means to stand by decisions and not to disturb what is settled. This was aptly put by Lord Coke in his classic English version as "Those things which have been so often adjudged ought to rest in peace". However, according to Justice Frankfurter, the doctrine of stare decisis is not "an imprisonment of reason" (Advanced Law Lexicon, P. Ramanatha Aiyer, 3rd Edition 2005, Volume 4, p. 4456). The underlying logic of the doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.

The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience.

According to Professor Lloyd concepts are good servants but bad masters. Rules, which are originally designed to fit social needs, develop into concepts, which then proceed to take on a life of their own to the detriment of legal development. The resulting "jurisprudence of concepts" produces a slot-machine approach to law whereby new points posing questions of social policy are decided, not by reference to the underlying social situation, but by reference to the meaning and definition of the legal concepts involved. This formalistic a priori approach confines the law in a strait-jacket instead of permitting it to expand to meet the new needs and requirements of changing society (Salmond on Jurisprudence, Twelfth Edition, at p.187). In such cases Courts should examine not only the existing laws and legal concepts, but also the broader underlying issues of policy. In fact presently, judges are seen to be paying increasing attention to the possible effects of their decision one way or the other. Such an approach is to be welcomed, but it also warrants two comments. First, judicial inquiry into the general effects of a proposed decision tends itself to be of a fairly speculative nature. Secondly, too much regard for policy and too little for legal consistency may result in a confusing and illogical complex of contrary decisions. In such a situation it would be difficult to identify and respond to generalized and determinable social needs. While it is true that "the life of the law has not been logic, it has been experience" and that we should not wish it otherwise, nevertheless we should remember that "no system of law can be workable if it has not got logic at the root of it" (Salmond, ibid, pp.187-188).

Consequently, cases involving novel points of law, have to be decided by reference to several factors. The judge must look at existing laws, the practical social results of any decision he makes, and the requirements of fairness and justice. Sometimes these will all point to the same conclusion. At other times each will pull in a different direction; and here the judge is required to weigh one factor against another and decide between them. The rationality of the judicial process in such cases consists of explicitly and consciously weighing the pros and cons in order to arrive at a conclusion. (Salmond, ibid, pp. 188).

In case of modern economic issues which are posed for

resolution in advancing society or developing country, the court cannot afford to be static by simplistically taking shelter behind principles such as stare decisis, and refuse to examine the issues in the light of present facts and circumstances and thereby adopt the course of judicial "hands off". Novelty unsettles existing attitudes and arrangements leading to conflict situations which require judicial resolution. If necessary adjustments in social controls are not put in place then it could result in the collapse of social systems. Such novelty and consequent conflict resolution and "patterning" is necessary for full human development. (See - The Province and Function of Law, Julius Stone, at pp.588, 761and 762)

Stare decisis is not an inexorable command of the Constitution or jurisprudence. A careful study of our legal system will discern that any deviation from the straight path of stare decisis in our past history has occurred for articulable reasons, and only when the Supreme Court has felt obliged to bring its opinions in line with new ascertained fact, circumstances and experiences. (Precedent in Indian Law, A. Laxminath, Second Edition 2005, p. 8).

Given the progressive orientation of the Supreme Court, its creative role under Article 141 and the creative elements implicit in the very process of determining ratio decidendi, it is not surprising that judicial process has not been crippled in the discharge of its duty to keep the law abreast of the times, by the traditionalist theory of stare decisis (ibid, p. 32). Times and conditions change with changing society, and, "every age should be mistress of its own law" \026 and era should not be hampered by outdated law. "It is revolting", wrote Mr. Justice Holmes in characteristically forthright language, "to have no better reason for a rule of law than it was so laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past". It is the readiness of the judges to discard that which does not serve the public, which has contributed to the growth and development of law. (ibid, p. 68)

The doctrine of stare decisis is generally to be adhered to, because well settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances dictated by forceful factors supported by logic, amply justify the need for a fresh look.

Sir John Salmond, while dealing with precedents and illustrating instances of departure by the House of Lords from its own previous decisions, states it to be desirable as 'it would permit the House (of Lords) to abrogate previous decisions which were arrived at in different social conditions and which are no longer adequate in present circumstances. (See \026 Salmond, ibid, at p.165). This view has been succinctly advocated by Dr. Goodhart who said: "There is an obvious antithesis between rigidity and growth, and if all the emphasis is placed on absolutely binding cases then the law looses the capacity to adapt itself to the changing spirit of the times which has been described as the life of the law". (ibid, p.161) This very principle has been well stated by William O' Douglas in the context of constitutional jurisprudence. He says: "So far as constitutional law is concerned, stare decisis must give way before the dynamic component of history. Once it does, the cycle starts again". (See \026 Essays on Jurisprudence from the Columbia Law Review, 1964, at p.20)

We have already indicated that in Quareshi-I, the challenge to the constitutional validity of the legislation impugned therein, was turned down on several grounds though forcefully urged, excepting for one ground of 'reasonableness'; which is no longer the position in the case before us in the altered factual situation and circumstances. In Quareshi-I the reasonableness of the restriction pitted against the fundamental right to carry on any occupation, trade or business determined the final decision, having been influenced mainly by considerations of weighing the comparative inconvenience to the butchers and the advancement of public interest. As the detailed discussion contained in the judgment reveals, this determination is not purely one of law, rather, it is a mixed finding of fact and law. Once the strength of the factual component is shaken, the legal component of the finding in Quareshi-I loses much of its significance. Subsequent decisions have merely followed Quareshi-I. In the case before us, we have material in abundance justifying the need to alter the flow of judicial opinion.

Part - IV

Quareshi-I, re-visited :

Having dealt with each of the findings recorded in Quareshi-I, which formed the basis of the ultimate decision therein, we revert to examine whether the view taken by the Constitution Bench in Quareshi-I can be upheld.

We have already pointed out that having tested the various submissions made on behalf of the writ petitioners on the constitutional anvil, the Constitution Bench in Quareshi-I upheld the constitutional validity, as reasonable and valid, of a total ban on the slaughter of : (i) cows of all ages, (ii) calves of cows and she-buffaloes, male or female, and (iii) she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle. But the Constitution Bench found it difficult to uphold a total ban on the slaughter of she-buffaloes, bulls or bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals, on the material made available to them, the ban failed to satisfy the test of being reasonable and "in the interests of the general public". It is clear that, in the opinion of the Constitution Bench, the test provided by clause (6) of Article 19 of the Constitution was not satisfied. The findings on which the above-said conclusion is based are to be found summarized on pp.684-687. Para-phrased, the findings are as follows:

(1) The country is in short supply of milch cattle, breeding bulls and working bullocks, essential to maintain the health and nourishment of the nation. The cattle population fit for breeding and work must be properly fed by making available to the useful cattle in presenti in futuro. The maintenance of useless cattle involves a wasteful drain on the nation's cattle feed.

(2) Total ban on the slaughter of cattle would bring a serious dislocation, though not a complete stoppage, of the business of a considerable section of the people who are by occupation Butchers (Kasai), hide merchant and so on.

(3) Such a ban will deprive a large section of the

people of what may be their staple food or protein diet.

(4) Preservation of useful cattle by establishment of gosadan is not a practical proposition, as they are like concentration camps where cattle are left to die a slow death.

(5) The breeding bulls and working bullocks (cattle and buffaloes) do not require as much protection as cows and calves do.

These findings were recorded in the judgment delivered on 23rd April, 1958. Independent India, having got rid of the shackles of foreign rule, was not even 11 years old then. Since then, the Indian economy has made much headway and gained a foothold internationally. Constitutional jurisprudence has indeed changed from what it was in 1958, as pointed out earlier. Our socio-economic scenario has progressed from being gloomy to a shining one, full of hopes and expectations and determinations for present and future. Our economy is steadily moving towards prosperity in a planned way through five year plans, nine of which have been accomplished and tenth is under way.

We deal with the findings in Quareshi-I seriatim.

Finding 1 :

We do not dispute that the country is in short supply of milch cattle, breeding bulls and working bullocks and that they are essential to maintain the health and nourishment of the nation as held in Quareshi-I. Rather we rely on the said finding which stands reinforced by the several documents which we have referred to hereinbefore.

In the Quareshi-I era, there was a shortage of fodder in the country. Various plans were drawn up in the direction of exploring potential fodder areas for the future. Although, the planning was there; implementation was lacking. The Report of National Commission on Cattle, July 2002 (Vol. II) reveals that the existing fodder resources of the country can sustain and meet 51.92% of the total requirements to sustain its livestock population. But we have to take into consideration the fodder potential of the country. We have vast culturable waste land which with some efforts can be developed into good pasture land. Major part of the fallow land can be put under the plough for having fodder crops such as Jowar, Bajra and smaller millets. The combined area of several categories of land which can be developed as potential fodder area is 58.87 million hectares. If managed properly, there are areas in the country which can be developed into a "Grass Reservoir of India for use as pasture land". One very big potential area lies in Jaisaelmer District of Rajasthan (spread over 22,16,527 hectares). The Commission has recommended 23 steps to be taken by the State Government and the Central Government for development and conservation of food and fodder (See paras 37-41 of the report at pages 130-135).

So far as the State of Gujarat is concerned, we have already noticed, while dealing with the documentary evidence available on record, that fodder shortage is not a problem so far as this state is concerned and cow progeny, the slaughtering whereof has already shown a downward trend during the recent years, can very well be fed and maintained without causing any wasteful drain on the feed requisite for active milch, breeding and draught cattle.

Finding 2 :

The finding suffers from two infirmities. First, Quareshi-I has not felt the necessity of finding whether a 'total prohibition' is also included within 'restriction' as employed in Article 19(6). It is now well-settled that 'restriction' includes 'prohibition'. Second and the real fallacy in Quareshi-I is that the ban limited to slaughtering of cow progeny has been held at one place to be a 'total prohibition', while in our opinion, is not so. At another place, the effect of ban has been described as causing 'a serious dislocation, though not a complete stoppage of the business of a considerable section of the people'. If that is so, it is not a 'total prohibition'. The documentary evidence available on record shows that beef contributes only 1.3% of the total meat consumption pattern of the Indian society. Butchers are not prohibited from slaughtering animals other than the cattle belonging to cow progeny. Consequently, only a part of their activity has been prohibited. They can continue with their activity of slaughtering other animals. Even if it results in slight inconvenience, it is liable to be ignored if the prohibition is found to be in the interest of economy and social needs of the country.

Finding 3 :

In the first and second Five Year Plans (Quareshi-I era), there was scarcity of food which reflected India's panic. The concept of food security has since then undergone considerable change.

47 years since, it is futile to think that meat originating from cow progeny can be the only staple food or protein diet for the poor population of the country. 'India Vision 2020' (ibid, Chapter 3) deals with 'Food Security and Nutrition : Vision 2020'. We cull out a few relevant findings and observations therefrom and set out in brief in the succeeding paragraphs. Food availability and stability were considered good measures of food security till the Seventies and the achievement of self-sufficiency was accorded high priority in the food policies. Though India was successful in achieving self-sufficiency by increasing its food production, it could not solve the problem of chronic household food insecurity. This necessitated a change in approach and as a result food energy intake at household level is now given prominence in assessing food security. India is one of the few countries which have experimented with a broad spectrum of programmes for improving food security. It has already made substantial progress in terms of overcoming transient food insecurity by giving priority to self-sufficiency in foodgrains, employment programmes, etc. The real problem, facing India, is not the availability of food, staple food and protein rich diet; the real problem is its unequal distribution. The real challenge comes from the slow growth of purchasing power of the people and lack of adequate employment opportunities. Another reason for lack of food and nutrient intake through cereal consumption is attributable to changes in consumer tastes and preferences towards superior food items as the incomes of the household increases. Empirical evidence tends to suggest a positive association between the calorie intake and nutritional status. The responsiveness is likely to be affected by the factors relating to health and environment. It is unclear as to how much of the malnutrition is due to an inadequate diet and how much due to the environment.

India achieved near self-sufficiency in the availability of foodgrains by the mid-Seventies. The trend rate of foodgrain production improved 2.3 per cent during the 1960s and 1970s to 2.9 per cent in the Eighties. The recent economic survey of 2005 has also pointed out that the per capita availability of the milk has doubled since independence from 124 gms/day in the year 1950-51 to 229 gms/day in the year 2001-02. (Report of

National Commission on Cattle. Vol. II, p. 84.)

A complete reading of the research paper on Food Security and Nutrition (Chapter 3 in India Vision 2020) is a clear pointer to the fact that desirable diet and nutrition are not necessarily associated with non-vegetarian diet and that too originating from slaughtering cow progeny. Beef contributes only 1.3% of the total meat consumption pattern of the Indian society. Consequently a prohibition on the slaughter of cattle would not substantially affect the food consumption of the people. To quote (ibid. p.209) : "Even though the question of desirable diet from nutritional perspective is still controversial, we can make certain policy options to overcome the nutritional deficiencies. The most important problem to be attended is to increase the energy intake of the bottom 30 per cent of the expenditure class. The deficiency of energy intake of the bottom 30 per cent can be rectified by increasing agricultural productivity in rain fed areas, making available food at an affordable price through the Public distribution system (PDS), and other poverty alleviation programmes. The micro-nutrient deficiency can be cost-effectively rectified by supplementary nutritional programmes to the children and the expectant and lactating mothers."

The main source of staple food which is consumed both by vegetarians and non-vegetarians is supplied by vegetables. Synthetic staple food has also been made available by scientific researches. It will, therefore, not be correct to say that poor will suffer in availing staple food and nutritional diet only because slaughter of cow progeny was prohibited.

Finding 4 :

Quareshi-I itself reveals a very general opinion formed by the Court as to the failure of gosadans and their inability to preserve cattle. The statistics made available before us are a positive indicator to the contrary that gosadans and goshalas are being maintained and encouraged so as to take up both useful and so-called useless cattle, if the owner is not willing to continue to maintain them. Quareshi-I relied on a Report of an Expert Committee, which has certainly become an outdated document by the lapse of 47 years since then. Moreover, independent of all the evidence, we have in this judgment already noticed that cattle belonging to the category of cow progeny would not be rendered without shelter and feed by the owner to whom it had served throughout its life. We find support from the affidavits and reports filed on behalf of the State of Gujarat which state inter alia "farmers love their cattle".

National Commission on Cattle in its Report (ibid) has incorporated as many as 17 recommendations for strengthening of goshalas (para 20 at pages 120-122)

We have already noticed in the affidavits filed on behalf of the State of Gujarat that, in the State of Gujarat adequate provisions have been made for the maintenance of gosadans and goshalas. Adequate fodder is available for the entire cattle population. The interest exhibited by the NGOs seeking intervention in the High Court and filing appeals in this Court also indicates that the NGOs will be willing to take up the task of caring for aged bulls and bullocks.

Finding 5

In Quareshi-I, vide para 42, the Constitution Bench chose to draw a distinction between breeding bulls and working bullocks, on the one hand and cows and calves, on the other hand, by holding that the farmers would not easily part with the breeding bulls and working bullocks to the butchers as they are useful to the farmers. It would suffice to observe that the protection is needed by the bulls and bullocks at a point of time when their utility has been reduced or has become nil as they near the end of their life. That is what Article 48, in fact,

protects, as interpreted in this judgment.

India, as a nation and its population, its economy and its prosperity as of today are not suffering the conditions as were prevalent in 50s and 60s. The country has achieved self-sufficiency in food production. Some of the states such as State of Gujarat have achieved self-sufficiency in cattle-feed and fodder as well. Amongst the people there is an increasing awareness of the need for protein rich food and nutrient diet. Plenty of such food is available from sources other than cow/cow progeny meat. Advancements in the field of Science, including Veterinary Science, have strengthened the health and longetivity of cattle (including cow progeny). But the country's economy continues to be based on agriculture. The majority of the agricultural holdings are small units. The country needs bulls and bullocks.

For multiple reasons which we have stated in very many details while dealing with Question-6 in Part II of the judgment, we have found that bulls and bullocks do not become useless merely by crossing a particular age. The Statement of Objects and Reasons, apart from other evidence available, clearly conveys that cow and her progeny constitute the backbone of Indian agriculture and economy. The increasing adoption of non-conventional energy sources like Bio-gas plants justify the need for bulls and bullocks to live their full life in spite of their having ceased to be useful for the purpose of breeding and draught. This Statement of Objects and Reasons tilts the balance in favour of the constitutional validity of the impugned enactment. In Quareshi-I the Constitution Bench chose to bear it in mind, while upholding the constitutionality of the legislations impugned therein, insofar as the challenge by reference to Article 14 was concerned, that "the legislature correctly appreciates the needs of its own people". Times have changed; so have changed the social and economic needs. The Legislature has correctly appreciated the needs of its own people and recorded the same in the Preamble of the impugned enactment and the Statement of Objects and Reasons appended to it. In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of Nation's economy. Merely because it may cause 'inconvenience' or some 'dislocation' to the butchers, restriction imposed by the impugned enactment does not cease to be in the interest of the general public. The former must yield to the latter.

According to Shri M.S. Swaminathan, the eminent Farm Scientist, neglect of the farm sector would hit our economy hard. According to him "Today, global agriculture is witnessing two opposite trends. In many South Asian countries, farm size is becoming smaller and smaller and farmers suffer serious handicaps with reference to the cost-risk-return structure of agriculture. In contrast, the average farm size in most industrialized countries is over several hundred hectares and farmers are supported by heavy inputs of technology, capital and subsidy. The on-going Doha round of negotiations of the World Trade Organisation in the field of agriculture reflects the polarization that has taken place in the basic agrarian structure of industrialized and developing countries. Farming as a way of life is disappearing and is giving way to agribusiness." (K.R. Narayanan Oration delivered by Dr. Swaminathan at the Australian National University, Canberra, published in 'The Hindu', October 17, 2005, p.10)

"In India, nearly 600 million individuals are engaged in farming and over 80 per cent of them belong to the small and marginal farmer categories. Due to imperfect adaptation to local

environments, insufficient provision of nutrients and water, and incomplete control of pests, diseases and weeds, the present average yields of major farming systems in India is just 40 per cent of what can be achieved even with the technologies currently on the shelf. There is considerable scope for further investment in land improvement through drainage, terracing, and control of acidification, in areas where these have not already been introduced." (ibid)

Thus, the eminent scientist is very clear that excepting the advanced countries which have resorted to large scale mechanized farming, most of the countries (India included) have average farms of small size. Majority of the population is engaged in farming within which a substantial proportion belong to small and marginal farmers category. Protection of cow progeny will help them in carrying out their several agricultural operations and related activities smoothly and conveniently. Organic manure would help in controlling pests and acidification of land apart from resuscitating and stimulating the environment as a whole.

Having subjected the restrictions imposed by the impugned Gujarat enactment to the test laid down in the case of N.M. Thomas (supra) we are unhesitatingly of the opinion that there is no apparent inconsistency between the Directive Principles which persuaded the State to pass the law and the Fundamental Rights canvassed before the High Court by the writ petitioners.

Before we part, let it be placed on record that Dr. L.M. Singhvi, the learned senior counsel for one of the appellants, initially tried to build an argument by placing reliance on Article 31C of the Constitution. But at the end he did not press this submission. Similarly, on behalf of the respondents, the Judgment of the High Court has been supported only by placing reliance on Article 19(6) of the Constitution. The legislative competence of the State Legislature to enact the law was not disputed either in the High Court or before us.

Result

For the foregoing reasons, we cannot accept the view taken by the High Court. All the appeals are allowed. The impugned judgment of the High Court is set aside. The Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (Gujarat Act No. 4 of 1994) is held to be intra vires the Constitution. All the writ petitions filed in the High Court are directed to be dismissed.

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A.K. MATHUR, J.

I have gone through the erudite judgment by Hon'ble Chief Justice. But I regret I cannot support the view taken by Hon'ble Chief Justice.

Basic question that arises in these petitions are whether there is need to over-rule the earlier decisions which held the field right from 1958-1996, is the ground realities have materially changed so as to reverse the view held by successive Constitutional Benches of this Court or those decisions ceased to have any relevance.

It is true that life is ever changing and the concept which was useful in 18th century may not be useful in this millennium. We have gone from cartage to space age. New scientific temper is a guiding factor in this millennium. But despite the changing pattern of life it cannot be said that the decision delivered in the case of Mohd. Qureshi followed by subsequent decisions have outlived its ratio. In my respectful view the material which

has been placed for taking a contrary view does not justify the reversal of earlier decisions.

The detailed history of the legislation and various decisions bearing on the subject has been dealt with by Hon'ble Chief Justice in most exhaustive and pains-taking manner. Therefore, there is no need to repeat those legislative as well as judicial history here. My endeavor in this opinion will be to show that the situation which existed right from 1958 till this date there is no material change warranting reversal of the judgments bearing on the subject from 1958-96.

The whole controversy arose in the writ petition filed in the Gujarat High Court challenging the validity of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (hereinafter referred to Gujarat Act No. 4 of 1994). By this amendment the age of bulls and bullocks which was existed at that time that is bull below the age of 16 years and bullocks below the age of 16 years can not be slaughtered was deleted. By this amendment the age restriction was totally taken away and that means that no bull and bullock irrespective of age shall be slaughtered. This amendment was challenged before the Gujarat High Court. The Gujarat High Court after dealing with all aspects in detail held that amendment is ultra vires. Hence, the present petition alongwith the other petitions came up before this Court by Special Leave Petition.

The matter was listed before the three Judges' Bench. Thereafter, it was taken by the Constitution Bench and the Constitution Bench realizing difficulty that there are already Constitution Bench judgments holding the field, referred the matter to the seven Judges' Bench for reconsideration of all the earlier decisions of the Constitution Benches. Hence these matters are before seven Judges' Bench.

Hon'ble the Chief Justice has already reproduced the objects and reasons for amendment therefore same need not be reproduced here. This amendment brought about to effect directive principles of the State Policy under Articles 47, 48 of the Constitution and Clause (b) and (c) of Article 39 of the Constitution.

Thereafter, Hon'ble Chief Justice has also reviewed all the cases bearing on the subject which can be enumerated as under:

1. AIR 1958 SC 731 (Mohd. Hanif Qureshi & Ors. Vs. State of Bihar)
2. AIR 1961 SC448 (Abul Hakim Vs. State of Bihar)
3. 1969 (1) SCC 853 (Mohd. Faruk Vs. State of M.P. & Ors.)
4. 1986 (3) SCC 12 (Haji Usmanbhai Hasanbhai Qureshi Vs. State of Gujarat
5. 1996 (4) SCC 391 (Hashmattullah Vs. State of M.P. & Ors.)

In these cases, this very question was agitated & by series of decisions it was answered in the negative.

In Mohd. Hanif Qureshi's case this Court upheld a total prohibition of slaughter of the cows of all ages and calf of buffalows (male and female) & she-buffaloes, breeding bulls and working bullocks, without prescribing any test of requirement as to their age. But so far as bull & bullocks are concerned when they ceased to have draughtability prohibition of their slaughter was not upheld in public interest. Hon'ble S.R. Das, CJ speaking for the Court exhaustively dealt with all the aspects which practically covers all the arguments which have been raised before us, especially, the utility of the cow-dung for manure as well as the cow urine for its chemical qualities like Nitrogen Phosphates and Potash. His Lordship recognized that this enactment was made in discharge of State's obligation under Art. 48 of the Constitution to preserve our livestock.

His Lordship has discussed the question of reasonable restriction under Article 19 (6) and after considering all material placed before the Court, and adverting to social, religious, utility point of view in most exhaustive manner finally concluded thus :

"After giving our most careful and anxious consideration to the pros and cons of the problem as indicated and discussed above and keeping in view the presumption in favour of the validity of the legislation and without any the least disrespect to the opinions of the legislatures concerned we feel that in discharging the ultimate responsibility cast on us by the Constitution we must approach and analyze the problem in an objective and realistic manner and then make our pronouncement on the reasonableness of the restrictions imposed by the impugned enactments. So approaching and analyzing the problem, we have reached the conclusion (i) that a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down in Art. 48; (ii) that a total ban on the slaughter of she-buffaloes, or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle is also reasonable and valid and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of the general public."

Therefore, their Lordships have summarized the whole concept of preservation of the cattle life in India with reservation that those cattle head which have lost their utility can be slaughtered specially with regard to draught cattle, bulls, bullocks & buffaloes so as to preserve the other milching cattle for their better breed and their better produce.

Subsequently in another decision, in the case of Abdul Hakim vs. State of Bihar reported in AIR 1961 SC 448 the ban was imposed by the States of Bihar, Madhya Pradesh and U.P. which came up for consideration before this Court and in this context it was observed as under:

"The test of reasonableness should be applied to each individual statute impugned and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

Their Lordship also emphasized that the legislature is the best Judge of what is good for the community, by whose suffrage it comes into existence, the ultimate responsibility for determining the validity of the law must rest with the Court and the Court must not shirk that solemn duty cast on it by the Constitution.

It was observed that the unanimous opinion of the experts is that after the age of 15, bulls, bullocks and buffaloes are no longer useful for breeding, draught and other purpose and whatever little use they may have then is greatly off-set by the economic disadvantage of feeding and maintaining unserviceable cattle.

Section 3 of the Bihar Act in so far as it has increased the age limit to 25 in respect of bulls, bullocks and she-buffaloes, for the purpose of their slaughter imposes an unreasonable restriction on the fundamental right of the butchers to carry on their trade and profession. Moreover the restriction cannot be said to be in the interests of the general public, and to

that extent it is void.

Then again in the case of Mohd. Faruk vs. State of Madhya Pradesh and Ors. reported in 1969 (1) SCC 853, Constitution Bench was called upon to decide the validity of the notification issued by the Madhya Pradesh Government under Municipal Corporation Act. Earlier, a notification was issued by the Jabalpur Municipality permitting the slaughter of bulls and bullocks alongwith the other animals. Later on State Government issued notification cancelling the notification permitting the slaughter of bulls and bullocks. This came up for a challenge directly under Art. 32 of the constitution before this Court, that this restriction amounts to breach of Art. 19(1)(g) of the constitution. In that context, their Lordship observed:

"That the sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable if it is imposed not in the interest of the general public but merely to respect the susceptibilities and sentiments of a section of the people whose way of life belief or thought is not the same as that of the claimant. The notification issued must, therefore, be declared ultra virus as infringing Article 19(1)(g) of the Constitution."

Then again in the case of Haji Usmanbhai Hasanbhai Qureshi & Ors. vs. State of Gujarat reported in (1986) 3 SCC 12, the insertion of Section 5 (1-A) (c) and (d) was made under the Bombay Animal Preservation (Gujarat amendment) act 1979) came up for consideration. By virtue of this insertion by the Gujarat State, it was laid down that there will be ban of slaughter of bulls, bullocks below the age of 16 years. It was contented that this prohibition is unreasonable and violative of Art. 19(1)(g). Their Lordships upheld the restriction under Art. 19(6) with reference to Art. 48 of the constitution. Their Lordships upheld the contention of the State of Gujarat that with the improvement of scientific methods cattle up to the age of 16 years are used for the purpose of breeding and other agricultural operation. But by this Act of 1994 this age restriction has now been totally taken away by the Act of 1994 (which is subject matter of challenge in these petitions).

Then again the matter came up before this Court in the case of Hashmattullah vs. State of M.P. and Ors. reported in 1996 (4) SCC 391. This time the provisions of the M.P. Agricultural Cattle Preservation Act, 1959 came up for consideration. This Act was amended by Amending Act of 1991 and a total ban on slaughter of bulls and bullocks came to be imposed. And this was challenged being violative of Art. 19 (1)(g) of the constitution.

Their Lordships after reviewing all earlier cases on the subject and taking into consideration the uselessness of these bulls and bullocks after they have attained a particular age for agriculture operation like manure as well as bio-gas and ecology, observed in para 18 as under:

"We are pained to notice the successive attempts made by the State of Madhya Pradesh to nullify the effect of this Court’s decisions beginning with Mohd. Hanif’s case and ending with Mohd. Faruk’s case, each time on flimsy grounds. In this last such attempt, the objects and reasons show how insignificant and unsupportable the ground for bringing the legislation was. The main thrust of the objects and reasons for the legislation seems to be that even animals which have ceased to be capable of yielding milk or breeding or working as draught animals can be useful as they would produce dung which could be used to generate non-conventional sources of energy like bio-gas without so much as being aware of the cost of maintaining such

animals for the mere purpose of dung. Even the supportive articles relied upon do not bear on this point. It is obvious that successive attempts are being made in the hope that some day it will succeed as indeed it did with the High Court which got carried away by research papers published only two or three years before without realizing that they dealt with the aspect of utility of dung but had nothing to do with the question of the utility of animals which have ceased to be reproductive of capable of being used as draught animals. Besides, they do not even reflect on the economical aspect of; maintaining such animals for the sole purpose of dung. Prim facie it seems farfetched and yet the State Government thought it as sufficient to amend the law."

And their Lordships declined to review the ratio laid down in Mohd. Hanif Qureshi's case & reiterated the same.

This is a survey of the judicial determination on the subject. And in the last case their Lordships frowned on unsuccessful attempt by the State to somehow nullify the ratio laid down in Mohd. Hanif Qureshi's case and subsequent decisions following Qureshi's case. But this time, the State of Gujarat has come up to seek the review of earlier decisions. Now I shall examine the material which has been placed by the State of Gujarat to justify the total prohibition of slaughter of bulls and bullocks.

Learned counsel for the appellant has brought to our notice the affidavit filed by the State of Gujarat which has been reproduced by the Hon'ble Chief Justice on page 56 in his opinion onwards. Therefore, I need not reproduce the whole of the affidavit. Mr. J.S.Parikh, Deputy Secretary, Agricultural Cooperative and Rural Development Department of the State of Gujarat has in his affidavit stated that almost in 50% of the agricultural operation by tractor is not possible because of small holdings in the State of Gujarat. Therefore, for such small holdings the draught animals are best used for cultivation purposes. It was also stated that the total cultivated area of Gujarat State is about 124 lakh hectares and a pair of bullocks is required for ploughing 10 hectares of land. Therefore, 5.481million and approximately equal number is required for carting of whole land. In accordance with livestock census, the Gujarat State has availability of indigenous bullocks around 2.84 millions that means that a State has only 25% of their requirement and it is also stated that each bull is required for this purpose. He has also stated that bull or bullocks at every stage of life supplies 3500 kg. of dung and 2000 ltrs. of urine and this quantity of dung can supply 5000 cubic feet of biogas, 80 M.T. of organic fertilizer and the urine can supply 2000 ltrs of pesticides and the use of it in farming increases the yield very substantially. That in recent advancement of technology use of biogas has become very useful source of energy and the biogas can be prepared out of the cow dung and other inputs. It was pointed out that there are 19362 biogas plants installed in the State during 1995-97.

Similarly, an additional affidavit was filed by Mr. D.P. Amin, Joint Director of Animal Husbandry, Gujarat State. He has mentioned that the number of the slaughter houses have declined during the year 1982-83 to 1996-97. The average number of animals slaughtered in regulated slaughter houses was 4,39,141. It is also stated that there is a reduction in slaughter of the bull and bullocks above the age of 16 years. Almost 50 per cent of the land holdings are less than 2 hectares; tractor operation is not affordable to small farmers. For tractors operation one should have large holding of land. Such land holders are only around 10 per cent of the total land holders. Hence the farmers with small land holdings require bullocks for their agricultural operations and transport. There is reduction in slaughter of bulls and bullocks above the age of 16 years reported in the regulated slaughter houses of Gujarat State. As reported in the years from 1982-83 to 1996-97, the slaughter of bulls and bullocks above the age of 16 years was only 2.48% of the total animals of different categories slaughtered in the State. This percentage has gone down to the level of only 1.10%

during last 8 years i.e. 1997-98 to 2004-05 which is very less significant to cause or affect the business of butcher communities. He has also stated that the bullock above the age of 16 years can generate 0.68 horse power draught output while the prime bullock generates 0.83 horse power per bullock during carting/hauling draught work. Considering the utility of bullocks above 16 years of age as draught power a detailed combined study was carried out by Department of Animal Husbandry and Gujarat Agricultural University (Veterinary Colleges S.K. Nagar & Anand). The study covered different age groups of 156 (78 pairs) bullocks above the age of 16 years age generated 0.68 horse power draught output per bullock while the prime bullock generated 0.83 horse power per bullock during carting/hauling draught work in a summer with about more than 42: F temp. The study proves that 93% of aged bullock above 16 years of age are still useful to farmers to perform light and medium draught works. The importance of organic manure as a source of humus and plant nutrients to increase the fertility level of soils has been well recognized. The organic matter content of cultivated soils of the tropics and sub-tropics is comparatively low due to high temperature and intense microbial activity. The crops remove annually large quantity of plant nutrients from soil. Moreover, Indian soils are poor in organic matter and in major plant nutrients. Therefore, soil humus has to be replenished through periodic addition of organic manure for maintaining soil productivity. It was mentioned that there is number of bio-gas plants operating in the State of Gujarat.

Apart from these affidavits many more published documents have been placed on record which has been reproduced by the Hon’ble Chief Justice of India in his opinion. But all these are general datas which only provide the usefulness of cow dung for the purposes of manure as well as for biogas and likewise the urine of the cows for pesticides and ayurvedic purposes. But all those datas cannot change the reality that such an aged bull and bullocks produce huge quantity of the cow dung manure and urine which can alter a situation materially so as to reverse the earlier decisions of this court. Utility of the cow dung and urine was realized and appreciated in the earlier decision of this Court in Mohd. Hanif Qureshi’s and Ors. vs State of Bihar and Ors. (AIR 1958 SC 731) The then Chief Justice has quoted from various scriptures emphasizing the importance of the cattle life. Therefore it cannot be said that the earlier decisions rendered by the Constitution Bench was oblivious of these facts.

However, so far as the affidavits filed on behalf of State of Gujarat about the use of biogas and the usefulness of the draught animals has to be taken with pinch of salt, in both the affidavits it has been admitted that urine and the cow dung of the aged bull and bullocks beyond 16 years is reduced considerably and likewise their draughtability. Therefore, it is admitted that the bullocks which have crossed the age of 16 years their output for the urine, cow dung and draughtability is substantially reduced. Therefore it is explicit from their affidavits that the age of 16 years prescribed earlier was on a very reasonable basis after proper scientific study but de hors those scientific study the State Government brought this amendment removing the age limit for slaughtering of the bulls and bullocks and totally prohibited slaughtering of the same. This decision of the State Government does not advance the public interest.

Another significant disclosure in both these affidavits is that slaughtering of these bulls and bullocks has considerably reduced in the year 1997-98 to 2004-2005. The slaughtering of bulls and bullocks beyond the age of 16 years was only 2.48 % of the total animals of different categories slain in the State prior to this period. This percentage has gone down to the level of only 1.10 % during the last 8 years i.e. 1997-98 to 2004-2005. These details reveal that in fact the slaughtering of these bulls and bullocks beyond the age of 16 years constituted only 1.10% of the total slaughtering takes place in the State. If this is the ratio of the slaughtering, I fail to understand how this legislation can advance the cause of the public at the expense of the denial of Fundamental Right of this class of persons

(butchers). In view of facts disclosed in the affidavit filed by the two senior officer of the State of Gujarat speaks volume that for small percentage of 1.10% can the fundamental right of this class of persons should be sacrificed and earlier decisions be reversed. I fail to understand how it would advance the cause of the public at large so as to deprive the handful of persons of their rights to profession. On the basis of this material, I am of the opinion that the earlier decisions of this Court have not become irrelevant in the present context. The tall claim made by State looks attractive in a print but in reality it is not so. I fail to understand that how can an animal whose average age is said to be 12-16 years can at the age of 16 years reproduce the cow-dung or urine which can off set the requirement of the chemical fertilizer. In this connection reference be made to text book where average age is 12 years. It is a common experience that the use of the chemical fertilizer has increased all over the country and the first priority of the farmer is the chemical fertilizer, as a result of which the production in food grain in the country has gone up and today the country has become surplus. This is because of the use of the chemical fertilizer only and not the organic manure. It was observed in Mohd. Hanif's case that India has a largest cattle head but a lower in the production of milk. It is only because of the scientific methods employed by veterinarian which has increased the milk production in the country not because of the poor breed of the bulls. It is common experience that aged bulls are not used for purposes of covering the cows for better quality of the breed. Only well-built young bulls are used for the purpose of improving the breeding and not the aged bulls. If the aged and weak bulls are allowed for mating purposes, the off-spring will be of poor health and that will not be in the interest of the country. So far as the use of biogas is concerned, that has also been substantially reduced after the advent of L.P.G.
Therefore in my opinion, in the background of this scenario, I do not think that it will be proper to reverse the view which has been held good for a long spell of time from 1958 to 1996. There is no material change in ground realities warranting reversal of earlier decisions.

One of the other reasons which has been advanced for reversal of earlier judgments was that at the time when these earlier judgments were delivered Article 48(A) and 51(A) were not there and impact of both these Articles were not considered. It is true that Article 48(A) which was introduced by the 42nd Constitutional Amendment in 1976 with effect from 3.1.1977 and Article 51(A) i.e. fundamental duties were also brought about by the same amendment. Though, these Articles were not in existence at that time but the effect of those Articles were indirectly considered in the Mohd. Hanif Qureshi's case in 1958. It was mentioned that cow dung can be used for the purposes of manure as well as for the purpose of fuel that will be more echo-friendly. Similarly, in Mohd. Hanif Qureshi's case their Lordships have quoted from the scriptures to show that we should have a proper consideration for our cattle wealth and in that context their Lordships quoted in para 22 which reads as under:

"22. The avowed object of each of the impugned Acts is to ensure the preservation, protection, and improvement of the cow and her progeny. This solicitude arises out of the appreciation of the usefulness of cattle in a predominantly agricultural society. Early Aryans recognized its importance as one of the most indispensable adjuncts of agriculture. It would appear that in Vedic times animal flesh formed the staple food of the people. This is attributable to the fact that the climate in that distant past was extremely cold and the Vedic Aryans had been a pastoral people before they settled down as agriculturists. In Rg. Vedic times goats, sheep, cows, buffaloes and even horses were slaughtered for food and for religious sacrifice and their flesh used to be offered to the Gods. Agni is called the "eater of ox or cow" in Rg.Veda (VIII,43,11). The slaying of a great ox (Mahoksa) or a "great Goat" (Mahaja) for the entertainment of a distinguished guest has been enjoined in the Satapatha Brahmana (III.4. 1-2). Yagnavalkya also

expresses a similar view (Vaj.1. 109). An interesting account of those early days will be found in Rg.Vedic Culture by Dr. A.C. Das, Chapter 5, pages 203-5 and in the History of Dharamasastras (Vol.II, Part II) by P.V. Kane at pages 772-773. Though the custom of slaughtering of cows and bulls prevailed during the vedic period, nevertheless, even in the Rg. Vedic times there seems to have grown up a revulsion of feeling against the custom. The cow gradually came to acquire a special sanctity and was called "Aghnya" (not to be slain). There was a school of thinkers amongst the Risis, who set their face against the custom of killing such useful animals as the cow and the bull. High praise was bestowed on the cow as will appear from the following verses from Rg.Veda, Book VI, Hymn XXVIII (Cows) attributed to the authorship of Sage Bhardavaja:

"1 . The kine have come and brought good fortune;
let them rest in the cow-pen and be happy near us.

Here let them stay prolific, many coloured, and
yield through many morns their milk for Indra.

6. O Cows, ye fatten e'n the worn and wasted, and
make the unlovely beautiful to look on.

Prosper my house, ye with auspicious voices, your
power is glorified in our assemblies.

7. Crop goodly pasturages and be prolific; drink
pure sweet water at good drinking places.

Never be thief or sinful man your master, and may
the dart of Rudra still avoid you."

(Translation by Ralph Griffith). Verse 29 of hymn 1 in Book X of Atharva Veda forbids cow slaughter in the following words:

"29. The slaughter of an innocent, O Kritya, is an
awful deed, Slay not cow, horse, or man of ours."

Hyman 10 in the same book is a rapturous glorification of the cow:

"30. The cow is Heaven, the cow is Eath, the cow
is Vishnu, Lord of life.

The Sadhyas and the Vasus have drunk the
outpourings of the cow.

34. Both Gods and mortal men depend for life and
being on the cow.
She hath become this universe; all that the sun
surveys is she."

P.V. Kane argues that in the times of the Rg.Veda only barren cows, if at all, were killed for sacrifice or meat and cows yielding milk were held to be not fit for being killed. It is only in this way, according to him that one can explain and reconcile the apparent conflict between the custom of killing cows for food and the high praise bestowed on the cow in Rg.Vedic times. It would appear that the protest raised against the slaughter of cows greatly increased in volume till the custom was totally abolished in a later age. The change of climate perhaps also make the use of beef as food unnecessary and even injurious to health. Gradually cows became indicative of the

wealth of the owner. The Neolithic Aryans not having been acquainted with metals, there were no coins in current use in the earlier stages of their civilization, but as they were eminently a pastoral people almost every family possessed a sufficient number of cattle and some of them exchanged them for the necessaries of their life. The value of cattle (Pasu) was, therefore, very great with the early Rg.Vedic Aryans. The ancient Romans also used the word pecus or pecu (pasu) in the sense of wealth or money. The English words, "pecuniary" and "impecunious", are derived from the Latin root pecus or pecu, originally meaning cattle. The possession of cattle in those days denoted wealth and a man was considered rich or poor according to the large or small number of cattle that he owned. In the Ramayana king Janaka's wealth was described by reference to the large number of herds that he owned. It appears that the cow was gradually raised to the status of divinity. Kautilya's Arthasastra has a special chapter (Ch.XXIX) dealing with the "superintendent of cows" and the duties of the owner of cows are also referred to in Ch.XI of Hindu Law in its sources by Ganga Nath Jha. There can be no gainsaying the fact that the Hindus in general hold the cow in great reverence and the idea of the slaughter of cows for food is repugnant to their notions and this sentiment has in the past even led to communal riots. It is also a fact that after the recent partition of the country this agitation against the slaughter of cows has been further intensified. While we agree that the constitutional question before us cannot be decided on grounds of mere sentiment, however passionate it may be, we, nevertheless, think that it has to be taken into consideration, though only as one of many elements, in arriving at a judicial verdict as to the reasonableness of the restrictions."

Therefore it cannot be said that the Judges were not conscious about the usefulness and the sanctity with which the entire cow and its progeny has been held in our country. Though Article 48(A) and 51(A) were not there, but their Lordships were indirectly conscious of the implication. Articles 48(A) and 51(A) do not substantially change the ground realities which can persuade to change the views which have been held from 1958 to 1996. Reference was also made that for protection of top soil, the cow dung will be useful. No doubt the utility of the cow dung for protection of the top soil is necessary but one has to be pragmatic in its approach that whether the small yield of the cow dung and urine from aged bulls and bullocks can substantially change the top soil. In my opinion this argument was advanced only for the sake of argument but does not advance the case of the petitioners/appellants to reverse the decision of the earlier Benches which had stood the test of time.

In this connection, it will be relevant to refer the principle of stare decisis. The expression of 'stare decisis' is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudications". It is true that law is a dynamic concept and it should change with the time. But at the same time it shall not be so fickle that it changes with change of guard. If the ground realities have not changed and it has not become irrelevant with the time then it should not be reviewed lightly. I have discussed above the reasons which have been given by the State of Gujarat for reconsideration of the earlier decisions on the subject, in my humble opinion the justification so pleaded is not sufficient to change or review the decision of the Constitution Bench by the present Bench of seven Judges.

The principle of stare decisis is based on a public policy. This policy is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e. that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law. If the courts start changing their

views frequently then there will be a lack of certainty in the law and it is not good for the health of the nation.

Craies on Statue Law, 7th Edition, it was observed that:
"The rule is also founded more logically on the axiom statre decisis, which was the ground of the decision in Hanau vs Ehrlich. The case turned on the ambiguous words in the Statute of Frauds as to agreements not to be performed within a year from the making thereof. The House of Lords in 12912 decided that though it may be well doubted whether an agreement for more than one year determinable by notice within the year is within the statute, a long course of decisions going back to 1829 in the affirmative ought not to be disturbed. And in 1945 Scott L.J. refused to decide against a decision of Malins Vs. C. in 1870 on the ground that the construction placed by the Vice-Chancellor on certain sections of the Companies Act 1862 had been accepted for a long time. In 1958 Lord Evershed M.R. said: "There is well-established authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision."

In 1919 Lord Buckmaster enunciated the principles on which the rule of stare decisis is based. "Firstly, the construction of a statute of doubtful meaning once laid down and accepted for a long period of time ought not to be altered unless your Lordships could say positively that it was wrong and productive of inconvenience. Secondly, that the decisions upon which title to property depends or which by establishing principles of construction otherwise form the basis of contracts ought to receive the same protection. Thirdly, decisions affecting the general conduct of affairs, so that their alteration would mean that taxes had been unlawfully imposed or exemption unlawfully obtained, payments needlessly made or the position of the public materially affected, ought in the same way to continue."

Earlier, Lord Westbury had thus stated the rule, "We must bow to the uniform interpretation which has been put upon the statute of Elizabeth and must not attempt to disturb the exposition it has received \005. If we find a uniform interpretation of a statue upon a question materially affecting property, and perpetually recurring, and which has been adhered to without interruption, it would be impossible for us to introduce the precedent of disregarding that interpretation. Disagreeing with it would thereby be shaking rights and titles which have been founded through so many years upon the conviction that that interpretation is the legal and proper one and is one which will not be departed from."

The rule of stare decisis was followed in Associated Newspapers Ltd. vs City of London Corporation, where the House of Lords declined to overrule two old cases which established the non-ratability of certain property in the City of London on the construction of an Act of 1767, and in Morgan vs Fear, where the House of Lords refused to disturb a construction of the Prescription Act 1832, which had been settled and acted on for forty-six years. In Cohen vs Bayley-Worthington which turned on the construction of the Fines and Recoveries Act, 1833, the House of Lords refused to put on that Act a new construction, as property had been settled or otherwise dealt with for a long period of time on the faith of the older cases, and in Close vs Steel Co. of Wales Ltd. Lord Morton of Henryton said: "I have always understood that when

this House clearly expresses a view upon the construction of an Act of Parliament and bases its decision on that view, the Act must bear that construction unless and until Parliament alters the Act."

Therefore one of the hallmarks of the law is certainty predictability and stability unless the ground realty has completely changed. In the present case, as discussed above, in my opinion the ground reality has not changed and the law laid down by this court holds good and relevant. Some advancement in technology and more and more use of the cow dung and urine is not such a substantial factor to change the ground realities so as to totally done away with the slaughtering of the aged bulls and bullocks. It is true my Lord the Chief Justice has rightly observed that principle of stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. There is no quarrel to this proposition, but the only question is whether the earlier decisions are not logical or they have become unreasonable with the passage of time. In my humble opinion, those decisions still hold good in the present context also. Therefore, I do not think that there are compelling reasons for reversal of the earlier decisions either on the basis of advancement of technology or reason, or logic, or economic consideration. Therefore, in my humble opinion, there is no need to reverse the earlier decisions.

An argument was raised with regard to role of objects and reasons preceding the enactment. There is no two opinion that they are useful and for purposes of interpretation of the provisions whenever its validity is challenged. This aspect has been dealt with by the Hon'ble Chief Justice and I do not wish to add anything more to it.

Likewise, the Hon'ble Chief Justice has dealt in detail the relation of Fundamental Rights with Directive Principles. His Lordship has very exhaustively dealt with all the cases bearing on the subject prior and after decision in Keshwanand Bharti's case. The court should guard zealously Fundamental Rights guaranteed to the citizens of the society, but at the same time strike a balance between the Fundamental Rights and the larger interests of the society. But when such right clashes with the larger interest of the country it must yield to the latter. Therefore, wherever any enactment is made for advancement of Directive Principles and it runs counter to the Fundamental Rights an attempt should be made to harmonise the same if it promotes larger public interest.

Therefore, as a result of above discussion, I am of the view that the view taken by the Division Bench of the Gujarat High Court is correct and there is no justification for reversing the view taken by the earlier Constitution Bench decision of this Court. All appeals are dismissed. No order as to costs.